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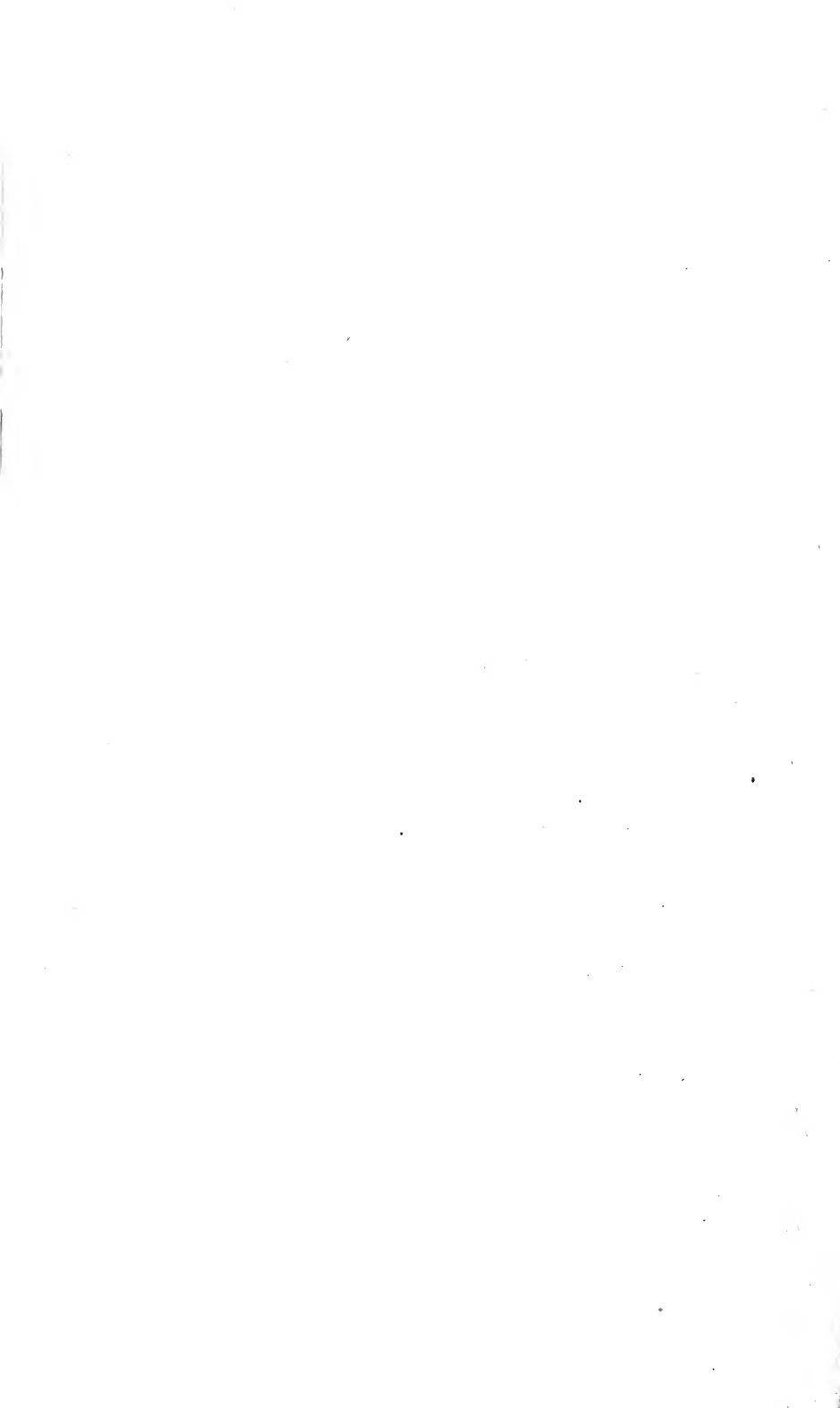
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No. 10695

Vol
2386

United States
Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

HOLTVILLE ICE AND COLD STORAGE COM-
PANY, ASSOCIATED FARMERS OF IM-
PERIAL COUNTY and HUGH T. OS-
BORNE,

Respondents.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 390

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

MAY 23 1944

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Labor Relations Board**



INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Acknowledgment of Service of Complaint, etc.	
Board's 1-T)	38
Acknowledgment of Service of Motion to	
Amend (Board's 1-U)	39
Affidavit of Service of Complaint, Notice of	
Hearing and Third Amended Charge	
(Board's 1-D)	13
Amended Charge, Third (Board's 1-A)	1
Amendment to the Complaint (Board's 1-L) ..	19
Affidavit of Service (Board's 1-M)	20
Answers to Complaint:	
Associated Farmers of Imperial County	
and Hugh T. Osborne (Board's 1-R) ...	21
Holtville Ice and Cold Storage Co.	
(Board's 1-S)	26
Answer of Holtville Ice and Colt Storage Co.	
Employees Assn. to Amended Complaint	
(Board's 1-W)	41
Answers to Petition for Enforcement of an Or-	
der of the National Labor Relations Board:	
Associated Farmers of Imperial County and	
Hugh T. Osborne	111
Holtville Ice and Cold Storage Co.	117

Index	Page
Certificate of the National Labor Relations Board	97
Charge, Third Amended (Board's 1-AO)	1
Complaint (Board's 1-B)	4
Decision and Order	91
Intermediate Report	46
Conclusions of Law	83
Findings of Fact	50
Recommendations	85
Letter, Dec. 31, 1942, E. J. Eagen, Director to Holtville Ice and Cold Storage Co. (Board's 1-F)	14
Affidavit of Service (Board's 1-G)	16
Motion to Amend Complaint (Board's 1-V) ...	40
Notice of Hearing (Board's 1-C)	12
Order and Notice of Continuance (Board's 1-I) ..	17
Affidavit of Service (Board's 1-J)	18
Order to Show Cause	99
Returns on Service of Writ	100-102
Petition for Enforcement of an Order of the National Labor Relations Board	103
Statement of Points Relied Upon by:	
Associated Farmers of Imperial County and Hugh T. Osborne	124
Holtville Ice and Cold Storage Co.	122
National Labor Relations Board	110

Index	Page
Third Amended Charge (Board's 1-A)	1
Transcript of Testimony	126
Exhibit for Associated Farmers:	
1—Articles of Incorporation of Associated Farmers of Imperial County	821
Exhibits for Employees Assn.:	
1—By-laws of the Employees Association of the Holtville Ice and Cold Storage Co.	758
2—Constitution of the Employees Assn. of the Holtville Ice and Cold Storage Co.	762
3—Constitution of the Cramer Baking Company Employees Assn.—Imperial and Yuma Counties District	791
Exhibits for Holtville Ice and Cold Storage Co.:	
1—(A-B-C)—Payrolls of Holtville Ice and Cold Storage Co. for Jan. 15, 1941, 1942, 1943	182-184
2—Document dated Jan. 25, 1943 headed "Men Used to Start Plant After its being changed to an Electric Drive for 1941-42 Manufacturing Season on Oct. 29, 1941	188

	Index	Page
Exhibits for Holtville Ice and Cold Storage Co.—(Continued):		
3—Proposed Agreement between Employees Assn. of Holtville Ice and Cold Storage Co. and Holtville Ice & Cold Storage Co.		499
5—Employment Record—Employees as of Sept. 26, 1941		639
6—Document showing Number of Days worked by Employees, June-October, 1941		635
7—Agreement, Nov. 1, 1941 by and between Employees Assn. and Holtville Ice and Cold Storage Co.....		803
Exhibits for National Labor Relations Board:		
1-A—Third Amended Charge		128
Set out at page		1
1-B—Complaint		128
Set out at page		4
1-C—Notice of Hearing		128
Set out at page		12
1-D—Affidavit of Service		128
Set out at page		13

Index	Page
Exhibits for National Labor Relations Board—(Continued):	
1-F—Letter, Dec. 31, 1942, E. J. Eagen, Director, to Holtville Ice and Cold Storage Co.	128
Set out at page	14
1-G—Affidavit of Service	128
Set out at page	16
1-I—Order and Notice of Continuance	128
Set out at page	17
1-J—Affidavit of Service	128
Set out at page	18
1-L—Amendment to the Complaint ...	128
Set out at page	19
1-M—Affidavit of Service	128
Set out at page	20
1-R—Answer of Associated Farmers of Imperial County and Hugh T. Osborne to Complaint	128
Set out at page	21
1-S—Answer of Holtville Ice and Cold Storage Co. to Complaint	128
Set out at page	26

	Index	Page
Exhibits for National Labor Relations Board—(Continued):		
1-T—Acknowledgment of Service of Complaint, etc.		129
Set out at page		38
1-U—Acknowledgment of Service of Motion to Amend Complaint		133
1-V—Motion to Amend Complaint....		133
Set out at page		40
1-W—Answer of Holtville Ice and Cold Storage Co. Employees Assn. to Amended Complaint		136
Set out at page		41
2-(A-B)—Statement showing Customers for Year 1941 and Amount of Ice sold to Each		139-140
3-(A-B)—Statement showing Customers for Year 1942 and Amount of Ice sold to Each		141-2
4—Contributions to Associated Farmers, Sept. 29, 1942		167
5—Agreement, Nov. 1, 1941—Holtville Ice and Cold Storage Co. and Employees Assn.		312
6-A—Bulletin “Farmers” “Laborers” “Businessmen”		207

Index	Page
Exhibits for National Labor Relations Board—(Continued):	
6-B—Bulletin “Associated Farmers” Declaration of Law and Order....	208
8—Agreement, Holtville Ice and Cold Storage Co. and Employees Assn. Nov. 1, 1942	322
9-A—Letter, Jan. 12, 1942, Interna- tional Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 898 to Holtville Ice and Cold Storage Co.	357
9-B—Reply to Ex. 9-A—Jan. 23, 1942.	358
10—List of Employees that Began the Operations of the Plant in the Fall of 1940	600
11—Payroll for Period ending Jan. 1, 1941	643
12—Payroll for Period ending Feb. 1, 1941	645
13—Payroll for Period ending Feb. 15, 1941	647
14—Payroll Period ending Mar. 1, 1941	650
15—Payroll Period ending Jan. 1, 1942	653
16—Payroll Period ending Feb. 1, 1942	655
17—Payroll Period ending Feb. 15, 1942	657

	Index	Page
Exhibits for National Labor Relations Board—(Continued) :		
20—Payroll Period ending Mar. 15, 1941		832
21—Payroll Period ending Apr. 1, 1941		834
22—Payroll Period ending Apr. 15, 1941		835
23—Payroll Period ending May 1, 1941		836
24—Payroll Period ending May 15, 1941		838
25—Payroll Period ending June 1, 1941		839
26—Payroll Period ending June 15, 1941		841
27—Payroll Period ending July 1, 1941		842
28—Payroll Period ending July 15, 1941		844
29—Payroll Period ending Mar. 1, 1942		846
30—Payroll Period ending Mar. 15, 1942		848
31—Payroll Period ending April 1, 1942		849
32—Payroll Period ending April 15, 1942		850
33—Payroll Period ending May 1, 1942		851
34—Payroll Period ending May 15, 1942		852
35—Payroll Period ending June 1, 1942		853
36—Payroll Period ending June 15, 1942		854
37—Payroll Period ending July 1, 1942		855
38—Payroll Period ending July 15, 1942		856

Index	Page
Exhibits for National Labor Relations Board—(Continued):	
39—Date of Termination of Employment of Jones, Woolbridge, Harlan and Broderick and the Reason Therefor	859
40—Employment History of Stout, Harlan, Hogue, et al, dated Feb. 16, 1943	865
Witnesses for Associated Farmers:	
Bennett, G. G.	
—direct	819
—redirect	828
—recross	829
Osborne, Hugh T.	
—direct	830
—recalled, direct	872
Witnesses for Employees Assn.:	
Drinkard, George P.	
—direct	731
—voir dire	732
Herring, Thomas Franklin	
—direct	676
—cross	712
—recross	731

	Index	Page
Witnesses for Employees Assn.—(Continued):		
Stout, Merton Kirkwood		
—direct	733
—cross	773
—redirect	789, 797, 798
—voir dire	789
Whitelaw, R. B.		
—direct	812
—cross	815
Witnesses for Holtville Ice and Cold Storage Co.:		
Pool, Pete		
—direct	565
—cross (Mr. Ryan)	585, 613
—cross (Mr. Petersen)	601, 612
—cross (Mr. Yeager)	611
—recalled, direct	874
Smith, Herman P.		
—direct	615
—cross	640, 858
—recross	860
—redirect	862

Index

Page

Witnesses for Holtville Ice and Cold Storage Co.—(Continued):

Willard, F. A.

—direct	448, 504
—voir dire	497
—cross (Mr. Yeager)	514
—cross (Mr. Ryan)	516
—cross (Mr. Petersen)	560, 563
—cross (Mr. Whitelaw)	562
—redirect	564
—recalled, direct	868

Witnesses for the National Labor Relations Board:

Achstetter, Edward, Jr.

—direct	282
---------------	-----

Blankenship, Perry Thomas

—direct	366
—cross	379

Davis, LeRoy H.

—direct	420
—cross (Mr. Smith)	434
—cross (Mr. Yeager)	439
—cross (Mr. Whitelaw)	440
—redirect	441, 447
—recross (Mr. Petersen)	444, 446, 447
—recross (Mr. Smith)	445, 447

Index	Page
Witnesses for the National Labor Relations Board—(Continued):	
Fredenburg, Henry Clark	
—direct	269
—cross	279
—redirect	280
—recross	281
Fruhn, Herman	
—direct	380
—cross	388
—recross	390
Harlan, George R.	
—direct	289
—cross (Mr. Yeager)	326
—cross (Mr. Smith)	335
—cross (Mr. Petersen)	337
—redirect	342, 344
—recross (Mr. Smith)	343, 350
—recross (Mr. Whitelaw)	344
—recross (Mr. Petersen)	345
Hart, Lester Clarence	
—direct	400
—cross (Mr. Smith)	411, 419
—cross (Mr. Petersen)	418, 419
Miller, Henry G.	
—direct	359
—redirect	364
Osborne, H. T.	
—direct	199

Index

Page

Witnesses for the National Labor Relations Board—(Continued):

Pool, Herman T.

—direct	234
—cross (Mr. Smith)	253
—cross (Mr. Yeager)	261
—redirect	269

Standifer, Arthur Lee

—direct	391
—cross	396

Wells, Stanley Harrison

—direct	351
---------------	-----

Willard, F. A.

—direct	147
—cross	175
—redirect	191
—recross	192

BOARD'S EXHIBIT No. 1-A

United States of America
Before the National Labor Relations Board
21st Region

Case No. XXI C 1985

Date Filed 12/18/42

In the Matter of

HOLTVILLE ICE AND COLD STORAGE CO.,
ASSOCIATED FARMERS OF IMPERIAL
COUNTY: and HUGH T. OSBORNE

and

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL 898, AFL

THIRD AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Holtville Ice and Cold Storage Co.: at Holtville, Cal. Associated Farmers of Imperial County; El Centro, Cal. Hugh T. Osborne, El Centro, Cal. employing approximately 22 workers in refrigeration has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (2), (3) and (5) of said Act, in that the above named respondents and each of them since on or about September 15, 1941, and at all times thereafter, engaged in activities to interfere with, coerce and restrain employees of Holtville Ice and Cold

Storage Company and the right to self organize, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities, for the purpose of collective bargaining, or other mutual aid or protection.

On or about September 15, 1941, said respondents and each of them did sponsor, form and encourage the formation of a labor organization, namely Holtville Ice and Cold Storage Company Employees Association among employees of Holtville Ice and Cold Storage Company and have at all times since the formation of said organization, dominated and interfered with the administration of said organization, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

On or about the dates set opposite their names Holtville Ice and Cold Storage Company aided, assisted, and abetted by Associated Farmers of Imperial County and Hugh T. Osborne did discharge because of their union activities the following named persons and have at all times since said dates of discharge refused to reinstate and employ said persons.

Arthur Standifer, discharged October 3, 1941

Lester C. Hart, discharged October 16, 1941

L. H. Davis, discharged October 19, 1941

H. C. Fredenburg, discharged October 22, 1941

Perry T. Blankenship, discharged November 7,
1941

Herman T. Pool, discharged November 17, 1941

Herman Fruhn, refused reinstatement November 3, 1941

By the discharge of the aforementioned persons and each of them, and by their refusal to reinstate and employ the aforementioned persons, Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County, and Hugh T. Osborne and each of them, have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

Respondent, Holtville Ice and Cold Storage Company aided, abetted, assisted and encouraged by Associated Farmers of Imperial County and Hugh T. Osborne, has at all times since on or about October 12, 1941, refused and failed to bargain collectively with the duly designated representative of its employees within an appropriate unit, namely, Chauffeurs, Teamsters and Helpers Local 898, AFL, in regard to wages, hours of employment, rates of pay, and other conditions of employment. By the aforesaid acts and each of them, Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne, and each of them, did engage in and are engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

By the above acts and each of them, Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne, and each of them have engaged in and are engaging in unfair

labor practices within the meaning of Section 8, subsection (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

CHAUFFEURS, TEAMSTERS
AND HELPERS LOCAL 898,
AFL

By: ED ACKSTETTER, Secty. Treas.
Labor Temple, 795 Main St.,
El Centro, Calif. Phone: 96

Subscribed and sworn to before me this 18th day
of December, 1942, at Los Angeles, California.

CHARLES M. RYAN

Attorney 21st Region National
Labor Relations Board

2 Copies Sent to the Board 12/18/42

BOARD'S EXHIBIT No. 1-B

[Title of Board and Cause.]

COMPLAINT

It having been charged by Chauffeurs, Teamsters and Helpers, Local 898, affiliated with the American Federation of Labor, that Holtville Ice and Cold

Storage Company, hereinafter called Respondent Ice Company, and Associated Farmers of Imperial County, hereinafter called Respondent Associated Farmers, and Hugh T. Osborne, hereinafter called Respondent Osborne, said Respondents being hereinafter collectively called Respondents, have individually and collectively engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act, the National Labor Relations Board, by the Regional Director of the Twenty-first Region, designated as agent of said National Labor Relations Board, by its Rules and Regulations—Series 2, as amended, hereby issues its Complaint and alleges the following:

1. (a) Respondent Ice Company is, and at all times hereinafter referred to, has been, a corporation organized and existing under and by virtue of the laws of the State of California.

(b) Respondent Associated Farmers is, and at all times hereinafter referred to, has been a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office in the City of El Centro, State of California.

(c) Respondent Osborne, an individual, is, and at all times hereinafter referred to, has been, secretary and manager of Respondent Associated Farmers. Respondent Osborne resides in the City of El Centro, State of California.

(d) Respondent Ice Company is, and at all times hereinafter referred to, has been, a member of and a contributor to Respondent Associated Farmers.

(e) Respondent Associated Farmers and Respondent Osborne are, and at all times herein-mentioned, have been, acting directly and indirectly on behalf of and in the interest of Respondent Ice Company, and said Respondent Associated Farmers and Respondent Osborne are employers within the meaning of Section 2, subsection (2) of the Act.

2. Respondent Ice Company has its principal office and place of business in the City of Holtville, State of California, where it is engaged in the production, sale and distribution of ice.

3. Respondent Ice Company, in the course and conduct of its aforesaid business, causes and has continuously caused large quantities of materials to be purchased and obtained, shipped and transported in interstate and foreign commerce from and through States of the United States other than the State of California to Respondent Ice Company's place of business in Holtville, California.

4. Respondent Ice Company, in the course and conduct of its aforesaid business, causes and has continuously caused large quantities of ice produced by it to be sold, shipped and transported in interstate and foreign commerce from Respondent Ice Company's place of business in Holtville, California, to, into and through States of the United States other than the State of California and into foreign coun-

tries. Respondent Ice Company, in the course and conduct of its business, supplies large quantities of ice which are used in preparing, icing, cooling, and preserving vegetables and other products being shipped from Holtville, California and vicinity to, into, and through States of the United States other than California and into foreign countries.

5. (a) Chauffeurs, Teamsters and Helpers, Local 898, affiliated with the American Federation of Labor, hereinafter called the Union, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

(b) Holtville Ice and Cold Storage Company Employees Association, hereinafter referred to as the Association, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. Respondent Ice Company, while engaged at its place of business in Holtville, California, Respondent Associated Farmers and Respondent Osborne, jointly and separately, acting through their officers, agents, and employees, including without limitation, F. A. Willard, Herman Smith, Pete Pool, George R. Harlan, Hugh T. Osborne, and G. G. Bennett, did seek to discourage and did thereby discourage membership of Respondent Ice Company's employees in and their affiliation with the Union by making statements to said employees condemning unions as rackets and union members as racketeers and Communists; by advising said employees that it would do them no good to belong to a union; by stating to said employees that Holtville Ice and Cold Storage Company would never recognize the Union; by

threatening said employees with discharge if they joined or remained members of a union; by advising said employees to refrain from union activities; by questioning employees regarding their union activities.

7. Respondent Ice Company, while engaged at its place of business in Holtville, California, as described in paragraphs 2, 3 and 4 above, Respondent Associated Farmers and Respondent Osborne, jointly and separately, acting through their officers, agents and employees, including without limitation, F. A. Willard, Herman Smith, Pete Pool, George R. Harlan, Hugh T. Osborne, and G. G. Bennett, did, on or about September 15, 1941, sponsor, promote, encourage, assist and interfere with the formation of the Association, and has at all times since that date dominated and interfered with the administration of said Association and contributed support thereto, and has coerced and encouraged the aforesaid employees to accept said Association as their representative for the purpose of collective bargaining with Respondent Ice Company, in respect to rates of pay, wages, hours of employment and other conditions of employment.

8. By the acts, and each of them, as set forth in paragraph 7 above, Respondents, and each of them, have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

9. Respondent Ice Company, while engaged at its place of business in Holtville, California, as described in paragraphs 2, 3 and 4 above, Respondent

Associated Farmers, and Respondent Osborne, jointly and separately, acting through their officers, agents and employees, including without limitation F. A. Willard, Herman Smith, Pete Pool, George R. Harlan, Hugh T. Osborne and G. G. Bennett, did on or about the dates set opposite their names, discharge the following named employees of Respondent Ice Company, and each of them:

Arthur Standifer	October 3, 1941
Lester C. Hart	October 16, 1941
L. H. Davis	October 19, 1941
H. C. Fredenburg	October 22, 1941
Perry T. Blankenship	November 7, 1941
Herman T. Pool	November 17, 1941
Herman Fruhn	November 3, 1941

and has at all times since said dates of discharge, refused and failed to reinstate and employ the aforementioned persons, and each of them. Respondents discharged and refused and failed to reinstate and employ the aforesaid persons, and each of them, because they joined and assisted the Union and engaged in concerted activities for their mutual aid and protection.

10. By the acts, and each of them, as set forth in paragraph 9 above, Respondents, and each of them, did discriminate in regard to hire and tenure of employment of the employees named in paragraph 9 above, and did discourage, and are discouraging, membership in the Union, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

11. A unit for the purpose of collective bargaining composed of all employees, exclusive of supervisory and clerical employees, of Respondent Ice Company, would insure to said employees the full benefit of the right to self-organization and would otherwise effectuate the policies of the Act, and is therefore a unit appropriate for the purposes of collective bargaining.

12. Prior to October 12, 1941, and at all times thereafter, a majority of the employees in the unit set forth in paragraph 11 above, did designate the Union as their representative for the purpose of collective bargaining with Respondent Ice Company. By virtue of the aforesaid designation, the Union is and has been at all times since on or about October 12, 1941, the exclusive representative of all employees in the aforesaid unit for the purpose of collective bargaining with Respondent Ice Company in respect to wages, rates of pay, hours of employment and other conditions of employment.

13. On or about October 12, 1941, and on other subsequent dates, the Union requested the Respondent Ice Company, through its officers, agents, and employees, to bargain collectively in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment with the Union as the exclusive representative of all the employees in the aforesaid unit. On the aforesaid dates and at all times thereafter up to and including the date of this complaint, Respondent Ice Company, while engaged at its place of business in Holtville, California, as described in paragraphs 2, 3, and 4 above, Respond-

ent Associated Farmers and Respondent Osborne, jointly and separately, acting through their officers, agents, and employees, did refuse and fail to do now refuse and fail to bargain collectively in good faith in respect to rates of pay, wages, hours of employment and other conditions of employment with the Union as the exclusive representative of the employees in the Unit set forth in paragraph 12 above.

14. Respondents, and each of them, by refusing and failing to bargain collectively with the Union as described in paragraph 13 above, have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

15. Respondents, and each of them, by the acts and each of them set forth in paragraphs 6, 7, 9 and 13 above, did interfere with, coerce and restrain, and are interfering with, coercing and restraining employees of Respondent Ice Company in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

16. The aforesaid acts of Respondents, set forth in paragraphs 6, 7, 9 and 13 above, constitute unfair labor practices affecting commerce within the meaning of Section 8 subsections (1), (2), (3) and (5) and Section 2, subsections (6) and (7) of the Act.

17. The aforesaid acts of Respondents, referred to in paragraphs 6, 7, 9 and 13 above, occurring in connection with the operations of Respondent Ice Company as described in paragraphs 2, 3 and 4 above, have a close, intimate and substantial relation

to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore, the National Labor Relations Board on the 30th day of December, 1942, issues its Complaint against Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne, Respondents herein.

[Seal]

E. J. EAGEN, Director

National Labor Relations
Board Twenty-first Region

BOARD'S EXHIBIT No. 1-C

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 18th day of January, 1943, at 10:30 A.M., in Room "A" in the Barbara Worth Hotel, in El Centro, California a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the 21st Re-

gion, with offices at 808 U.S. Post Office and Court House, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on this 30th day of December, 1942.

[Seal]

ELWYN J. EAGEN,

Regional Director. National
Labor Relations Board.

BOARD'S EXHIBIT No. 1-D

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 31st day of December 1942, I served by postpaid registered mail, bearing Government frank, a copy of Complaint, Notice of Hear-

ing and Third Amended Charge to the following named persons, addressed to them at the following addresses:

Holtville Ice and Cold Storage Co.

Holtville

California

Associated Farmers of Imperial County

Holtville

California

Mr. Hugh T. Osborne

El Centro, California

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

MARION C. RIEMER

Subscribed and sworn to before me this 31st day of December 1942.

MARION ANDERSON

Designated Agent

BOARD'S EXHIBIT No. 1-F

December 31, 1942

Holtville Ice and Cold Storage Co.

Holtville

California

Re: Holtville Ice and Cold Storage Co.,

et al., Case XXI-C-1985

Gentlemen:

This is to call your attention to a typographical

error in the Complaint heretofore issued in the above-named case. On page 6, paragraph 14, second line, "paragraph 3 above" should read "paragraph 13 above." This correction is being made in the original of the Complaint. Will you please make a similar correction in the copy which was served on you.

Very truly yours,

E. J. EAGEN, Director

Twenty-first Region

Same letter to:

Associated Farmers of Imperial County
Holtville, California

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

Mr. Hugh T. Osborne

El Centro, California

Robert B. Whitelaw, Esq.

111 North Sixth St.

El Centro., Cal.

Clarence B. Smith, Esq.

212 Rehkopf Bldg.

Holtville, Calif.

BOARD'S EXHIBIT No. 1-G

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 31st day of December 1942, I served by postpaid registered mail, bearing Government frank, a copy of letter setting out correction in Complaint to the following named persons, addressed to them at the following addresses:

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

Mr. Hugh T. Osborne

El Centro

California

Associated Farmers of Imperial County

Holtville

California

Holtville Ice and Cold Storage Co.

Holtville

California

MARION RIEMER

Marion Riemer

Subscribed and sworn to before me this 1st day
of Jan. 1943

MARION ANDERSON

Designated Agent.

BOARD'S EXHIBIT No. 1-I

[Title of Board and Cause.]

ORDER AND NOTICE OF CONTINUANCE

This matter having come before Elwyn J. Eagen, Director for the National Labor Relations Board, Twenty-first Region, upon request of R. B. Whitelaw, Attorney for Associated Farmers of Imperial County and Hugh T. Osborne, for continuance of the hearing in this matter;

And said request being duly considered and a continuance of the hearing herein appearing to be necessary and proper;

It Is Hereby Ordered that the hearing herein, heretofore scheduled to begin on the 18th day of January, 1943, shall be and it hereby is continued to January 25, 1943, on which date the hearing shall be held at 10:30 A.M. at the place stated in the Notice of Hearing heretofore issued herein.

Dated: At Los Angeles, California, this 5th day of January, 1943.

[Seal]

ELWYN J. EAGEN, Director

National Labor Relations
Board 21st Region

BOARD'S EXHIBIT No. 1-J

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 6th day of January, 1943, I served by postpaid registered mail, bearing Government frank, a copy of Order and Notice of Continuance to the following named persons, addressed to them at the following addresses:

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

Mr. Hugh T. Osborne

El Centro, California

Associated Farmers of Imperial County

El Centro, California

Holtville Ice and Cold Storage Co.

Holtville, California

MARION RIEMER

Marion Riemer

Subscribed and sworn to before me this 6th day of Jan. 1943.

MARION ANDERSON

BOARD'S EXHIBIT No. 1-L

[Title of Board and Cause.]

AMENDMENT TO THE COMPLAINT

Now comes the National Labor Relations Board by the Regional Director of the Twenty-first Region and issues an Amendment to the Complaint in this cause as follows:

1. Insert following paragraph 6 of said Complaint the following paragraph:

6(a) The acts alleged in paragraph 6, above, occurred repeatedly from day to day beginning on or about September 1, 1941, and continuing up to and including the date of this Complaint.

Wherefore the Regional Director for the National Labor Relations Board for the Twenty-first Region issues this Amendment to the Complaint in the above-entitled cause.

Dated this 8th day of January, 1943.

[Seal] E. J. EAGEN

Director, 21st Region
National Labor Relations
Board
808 U. S. Post Office and
Courthouse
Los Angeles, California

BOARD'S EXHIBIT No. 1-M

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss:

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 8th day of January 1943, I served by postpaid registered mail, bearing Government frank, a copy of Amendment to the Complaint and covering letter to the following named persons, addressed to them at the following addresses:

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

Mr. Hugh T. Osborne

El Centro, California

Associated Farmers of Imperial County

El Centro, California

Holtville Ice and Cold Storage Co.

Holtville, California

MARION RIEMER

Marion Riemer

Subscribed and sworn to before me this 8 day
of January, 1943.

MARION ANDERSON

BOARD'S EXHIBIT No. 1-R

[Title of Board and Cause.]

ANSWER

Comes now the respondents, Associated Farmers of Imperial County, and Hugh T. Osborne, individually and as secretary-treasurer of the Associated Farmers of Imperial County, and G. G. Bennett, and in answer to the complaint on file herein admits, denies, alleges as follows:

1. Admit Sub-divisions a, b, c, d of Paragraph No. 1, but denies each and every part and every allegation contained in sub-division (e) of said paragraph No. 1.

2. Admit Paragraph No. 2.

3. These respondents have no information and beliefs sufficient to answer allegations contained in Paragraphs No. 3 and 4, and sub-division (a) of Paragraph No. 5, and placing their denial on that ground deny each and every allegation and every part therein contained, but these respondents admit the allegations contained in sub-division (b) of Paragraph No. 5.

4. These respondents deny each and every allegation and every part contained in Paragraph No. 6 of said complaint.

5. Deny each and every allegation and every part contained in Paragraph No. 7, except that respondent, Hugh T. Osborne, admits that he advised with the Association and on request of members of said Association, but that he did not sponsor, promote, or encourage or interfere with the formation of the

Association nor has he at any time since the formation of the Association, had anything whatsoever to do with the Association or its affairs, nor has he or any of the respondents contributed to the Association nor in any wise coerced or encouraged the employees to accept the said Association as their representative for the purpose of collective bargaining with the respondent Ice Company, with respect to rates of pay, wages, hours of employment or conditions of employment.

6. These respondents deny each and every allegation and every part contained in Paragraph No. 8.

7. These respondents deny each and every allegation and every part contained in Paragraph No. 9, and further allege that these respondents had no power, authority, or direction, either directly or indirectly, with the hiring or discharging of any of the employees of the respondent Ice Company or of any of the particular employees, whose names are set forth in Paragraph No. 9 and further allege that these respondents had no knowledge or information concerning the employees who were alleged to have been discharged, nor that said employees at any time asked for reinstatement, and further allege that they have no power, authority, or direction for reinstatement, either directly or indirectly of said employees.

8. These respondents deny each and every allegation and every part therein contained in Paragraph No. 10 in said complaint and said Hugh T. Osborne specifically alleges that he at no time discouraged or is he still discouraging membership in

the Union either directly or indirectly and that neither he or any of the other respondents, individually or collectively, engaged in or are either or any of them engaging in practices within the meaning of Section 8, subsection (3) of the Act.

9. These respondents are unable to answer the allegation contained in Paragraph No. 11 in as much as said Paragraph is so uncertain, unintelligible, and ambiguous to evade answer but do not admit any of the implications which may arise by reason of said uncertain, unintelligible, and ambiguous allegations.

10. These respondents have no information or beliefs sufficient to answer any of the allegations contained in Paragraphs No. 12 and 13 and place their denial on that ground, denying each and every allegation and every part therein contained.

11. These respondents and each of them deny that they have ever refused or failed to bargain collectively with the Union described in Paragraph No. 3 individually or otherwise or have any of them ever engaged in or are now engaged in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

12. Deny that these respondents or any of them by any of the alleged acts set forth in Paragraphs No. 6, 7, 9, and 13 in the complaint, or otherwise, or ever at all interfered with, coerced, or restrained. or are interfering, coercing, or restraining any of the employees of the respondent Ice Company in the exercise of any rights to which they may be guaranteed by reason of Section 7 of the Act, nor

have any of these respondents engaged in or now are engaging in any unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

13. These respondents deny that the alleged acts of either or any of them is set forth and herein specifically denied the Paragraphs No. 6, 7, 9, and 13 of said complaint constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (2), (3), and (5) or any of them and Section 2, subsections (6) and (7) or either of them.

14. These respondents deny that the acts referred to in Paragraphs No. 6, 7, 9, and 13 of said complaint are the acts of these respondents; that they occurred in connection with the operation of the respondent Ice Company as described in Paragraphs No. 2, 3, and 4, or any of them, have a clause, intimate and substantial, or intimate or substantial relation to trade, traffic and commerce in the several states, nor do they tend to lead to labor disputes burdening and/or obstructing commerce, and/or the free flow of commerce.

These respondents further answering said complaint and with particularity to the amendment of the complaint, being Paragraph No. 6, subsection (a) and deny that any acts as alleged in Paragraph No. 6 in said complaint occurred repeatedly or at all from day to day either beginning on September 1, 1941 or ever at all, or that they are continuing up to and including the date of this complaint or continuing at all.

Respondents further answering complaint and as

further, second, and separate defense allege:

1. That both the charge and the matters set forth and described in said complaint are barred by the statutes in that the same was not brought within one year from the alleged occurrence and alleged violations of the National Labor Relations Act;

Wherefore, these respondents pray that said proceedings be dismissed against said respondents or that the said Board find and determine that said respondents committed no acts constituting a violation of any part or portion of the National Labor Relations Act.

Dated this 20th day of January, 1943.

HUGH T. OSBORNE

For Holtville Ice and Cold Storage
Company: Associated
Farmers of Imperial County,
and Hugh T. Osborne

Whitelaw & Whitelaw

By R. B. Whitelaw

Attorneys for Respondents

State of California

County of Imperial—ss.

H. T. Osborne being first duly sworn, deposes and says: That he is one of the respondents in the above entitled action, that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on information and

belief and as to those matters he believes it to be true.

H. T. OSBORNE

Subscribed and sworn to before me this 19th day of January, 1943.

[Seal] MARY V. JONES

Notary Public in and for said County and State.

BOARD'S EXHIBIT No. 1-S

[Title of Board and Cause.]

ANSWER OF RESPONDENT, HOLTVILLE
ICE AND COLD STORAGE COMPANY

Comes now Holtville Ice and Cold Storage Company, F. A. Willard, Herman Smith and Pete Pool, who in answer to the complaint in the above matter admit, deny and allege as follows:

I.

Admit the allegations contained in paragraphs 1(a), 1(b), 1(c), and 1(d). Deny the allegations of paragraph 1(e) except it is admitted that the respondent Ice company is an employer.

II.

Admit the allegations of paragraph 2.

III.

Deny the allegations of paragraph 3.

IV.

These answering defendants deny the allegations of paragraph 4 and allege the fact to be that the respondent Ice Company manufactures ice at Holtville, Imperial County, California, and that all of said ice so produced is by it sold and delivered to the purchasers in Imperial County, California, and not elsewhere. And this respondent has no information or belief as to whether the ice manufactured by it does eventually go through other states of the United States other than California or into foreign countries and further alleges that it is informed that many of the packed cars of vegetables which have used ice from respondent company are sold two or three times locally before ever being shipped from Imperial County, California. That respondent Ice Company has no interest in the destination of said cars and keeps no record of where said cars go, but does allege that it sells all of its product to local packers and receives payment from said packers locally and makes no deliveries of ice other than in Imperial County, California, and that said ice was and is manufactured with the expectation and intention that the same will be sold within the state of manufacture and if the same is thereafter sold or used in interstate shipments by the purchasers thereof, that it is without the manufacturers knowledge.

V.

Admit the allegations contained in paragraphs 5(a) and 5(b).

VI.

These answering respondents deny generally and specifically each and every allegation and statement contained in paragraph 6 of the complaint. And as a further answer, F. A. Willard, as president and manager of respondent Ice Company, alleges that he informed the employees that it was entirely up to them whether they desired to join a union or not. He further alleges that he sent word to said employees that he was not permitted to discuss this matter with the employees and that they could join any union that they desired to join or form any union they desired to form, that it was a subject upon which he could not advise.

VI(a)

Deny generally and specifically all of the allegations contained in paragraph numbered 6(a) which was filed as an amendment to the complaint.

VII.

These answering respondents deny generally and specifically each and every allegation and statement contained in paragraph numbered 7 of the complaint.

VIII.

These answering respondents deny generally and specifically each and every allegation and statement contained in paragraph numbered 8 of the complaint.

IX.

These answering respondents deny each and every allegation and statement contained in paragraph

numbered 9 and allege the true facts to be as follows:

That the six men named in the complaint were laid off temporarily for the reason that the respondent Ice Company had, previous to the summer of 1941, produced its own power with diesel engines and that during the summer of 1941 the plant was changed over so as to operate with electricity and that due to said change of power the plant could be operated with less employees. That the principal business of the respondent Ice Company was the manufacture of what is known as vegetable ice, which was and is used in the packing of fruits and vegetables. That more than ninety per cent of the sales of ice of the plant were made between the months of December and June, during the lettuce and carrot shipping seasons. That the only business of the said Ice Company during the months of July, August, September, October, and November was the selling of a small amount of clear ice for domestic purposes. That it was the custom of the company each year prior to 1941 to lay men off some time after the end of the vegetable shipping season in June, and although it was also the custom of said company and had been for many years, to retain as many employees as possible during the summer and fall months doing maintenance and repair work in preparation for the coming vegetable season which would commence in the middle or latter part of December of each year. That is stated above, in the summer of 1941, after the completion of the carrot shipping season, a change-over was

made at the plant and electric power was installed. As many of the employees of the company who could be used in any capacity and who had been working during the shipping season were kept busy during the summer and early fall doing maintenance and repair work and that as their jobs were completed various employees were laid off but were not discharged and the six men named in paragraph 9 of the complaint were temporarily laid off because the plant was not operating and the repair and maintenance work had been completed.

That the employee Arthur Standifer was laid off on October 3, 1941. That during the time the plant was in operation said employee worked as a can puller, an operation necessary in the manufacture of ice, and that after the plant finished the shipping season in June, he was used for general maintenance work and repair work incidental to changing the plant over from diesel power to electric power. That the work which he was doing was completed on October 3, 1941. Said employee was laid off for the reason that there was no work at the plant for him until the company started to manufacture ice in the following December. That said employee never did apply for reinstatement.

The employee Lester C. Hart had been employed by the respondent Ice Company as a repairman used almost exclusively to repair the diesel engine equipment. That he was used around the plant for maintenance work after the close of the shipping season

in June and until September 30, 1941, in doing mechanical work incidental to the change-over from diesel power to electric power. That after said work was completed, his services were not required as the electric plant did not require the services of a repair mechanic. That no employee has ever been employed to take his place and that the only reason that he was laid off was because the services of a repair mechanic were no longer needed by the respondent Ice Company while said company was using electric power.

The employee L. H. Davis was laid off on October 19, 1941, but was paid regular salary until October 31, 1941. That F. A. Willard, as president and manager of respondent Ice Company, had decided one year previous to October 1, 1941, to discontinue the services of said L. H. Davis, and that the said F. A. Willard had instructed his office manager Herman Smith to discontinue the employment of the said L. H. Davis at the end of the shipping season in June of 1941 for the reason that there was practically no work for him to do after the close of the shipping season in June of each year and until the commencement of the new season in December. That the said F. A. Willard was away from Imperial County between June and late in September of 1941 and did not know until he returned late in September of 1941 that his instructions had not been carried out. That he again suggested to Herman Smith, his office manager, that there was practically no work to be done by the said L. H. Davis until the coming shipping season. That neither

respondent Ice Company, F. A. Willard, nor Herman Smith knew prior to the time the said L. H. Davis was laid off on October 19, 1941, that he had joined a union or become affiliated with any union and that said fact did not in any way enter into the discontinuance of his services.

That the employee H. C. Fredenburg was temporarily laid off on October 1, 1941, and thereafter worked one day late in the month of October, 1941. That said employee had previously been employed as a truck driver delivering vegetable ice to the various shipping sheds in Holtville during the lettuce and carrot shipping seasons. That after the sheds closed in June of 1941 said employee was used to do some delivering of clear ice for domestic purposes. That the clear ice business was practically nil on October 22, 1941, and the vegetable ice business would not commence until the middle of December, 1941. That said employee had also been used some in doing repair work on the diesel engines and since the diesel engines had been removed and electric power installed and there was no delivery work for him to do on October 22, 1941, he was laid off for said reasons only, and that he never did apply for reinstatement and undoubtedly would have been reinstated had he applied at the commencement of the vegetable shipping season.

That the employee Perry T. Blankenship had, prior to September 27, 1941, worked on the platform, in the storeroom, in the tank room, and in the engine room. That after the completion of the

vegetable shipping season in June of 1941 said employee was used for maintenance and repair work until September 27, 1941, when he completed the particular job he was doing. That the plant was not, at the time, manufacturing vegetable ice and that the sales of clear ice for domestic purposes were practically nil and that the company had no work for said employee at the time he was laid off. That said employee never did apply for reinstatement and undoubtedly would have been re-employed had he applied at the commencement of the following shipping season in some capacity although his services would not be required in the engine room as said work had been discontinued because of the change-over to electric power.

That the employee Herman T. Pool was laid off by his brother Pete Pool who was, on September 30, 1941, a plant foreman. That there was a feeling among some of the employees that the said Pete Pool, foreman, favored his brother Herman T. Pool, in giving him the easiest jobs around the plant and the question of retaining him as an employee had previously been discussed and said Pete Pool, foreman, had been advised that it was against the policy of the company for a foreman to employ his relatives. That the said Herman T. Pool was, however, kept during all the repair and maintenance work during the summer and fall of 1941 and was only laid off when said work was completed and at a time when the said company was not manufacturing any vegetable ice. That the said employee never did apply for reinstatement.

That the employee Herman Fruhn was laid off on July 31, 1941. That he had previously worked in the tank room and in the engine room. That his services in the tank room were satisfactory at all times but that the plant ceased manufacturing vegetable ice in June of 1941 and said employee was used in work around the machinery in installing the electric power and discontinuing the diesel plants. That his services were used until July 31, 1941, at which time he finished the particular work he had been doing and that there was, at that time, no other work around the plant which he could do until the commencement of the coming vegetable season in December of 1941. That said employee applied for reinstatement after the commencement of the shipping season in December of 1941. That he was reinstated and given work, and that he worked one day only and quit of his own accord.

X.

Deny each and every allegation and statement contained in paragraph numbered 10 of the complaint.

XI.

Paragraph 11 of the complaint is incomplete and uncertain. That these respondents cannot answer said paragraph because said paragraph is unintelligible and incomplete.

XII.

These answering respondents deny the allegations contained in paragraph 12 and allege that the union never had a majority of the employees of the re-

spondent Ice Company. That during the summer and fall months of 1941, as was the custom in each preceding year, the respondent Ice Company only employed a skeleton crew and that said union never did have a majority of said skeleton crew to the knowledge of these respondents, which skeleton crew was only about one-half of the regular number of employees so that respondent Ice Company emphatically denies that a majority of all employees, exclusive of supervisory and clerical employees, did designate the union as their representative for the purpose of collective bargaining and allege the fact company, and emphatically denies that the union is or has been since October 12, 1941, the exclusive representative of all employees in the unit for the purpose of collective bargaining and allege the fact to be that some time in the fall of 1941, the exact time being unknown to respondent Ice Company, that the Holtville Ice and Cold Storage Company Employees Association was formed by the employees, which said association is a labor organization within the meaning of Section II, Subsection 5 of the Act, and that said Association did, in the fall of 1941, have as its members a majority of the employees of said Ice Company exclusive of supervisory and clerical employees, and that said employees did designate said Association as their representative for the purpose of collective bargaining with respondent Ice Company, and that said Association is and has been at all times since its formation in the fall of 1941, the exclusive representative of all employees for the purpose of col-

lective bargaining with respondent Ice Company with respect to wages, rates of pay, hours of work, and other conditions of employment, and as far as respondent Ice Company and its officers know, said Association is in all things legal and regular and must be recognized by respondent Ice Company and dealt with as the exclusive representative of the employees for purposes of collective bargaining. And that in the fall of 1941 a contract was made and entered into between the employees and respondent Ice Company which said contract was renewed in the fall of 1942. That said contract contained provisions advantageous to the employees and by which contract the employees secured an increase in wages in the fall of 1941 and a further increase in the fall of 1942.

XIII.

Deny generally and specifically each and every allegation and statement contained in paragraphs numbered 13, 14, and 15 of the complaint and allege the true facts to be that some time during October of 1941 two men whose names are unknown to respondent Ice Company or to its officers or agents came to the office of said Ice Company and left a copy of a proposed contract between Chauffeurs, Teamsters, and Helpers, Local 898, A.F.L., and Holtville Ice and Cold Storage Company. That F. A. Willard, manager and president of the company, was out of the County at the time said contract was left at his office and that within a few days after his return to his office said two men whose names are unknown again called and asked Mr.

Willard whether or not he had as yet read said contract. He replied that he had not but that he would be glad to do so and requested said two men to return to his office after he had had a chance to read the contract. That said two men never did return to his office nor in any way communicate with said respondent Ice Company or F. A. Willard until on January 12, 1942, when a letter was received asking that the Ice Company bargain with the union. Reply was made that a contract had been entered into with the local union. Nor did any other persons come personally or contact the said respondent Ice Company nor the said F. A. Willard regarding the proposed contract.

XIV.

Deny each and every allegation and statement contained in paragraph numbered 16 of the complaint.

XV.

Deny the allegations of paragraph numbered 17 of the complaint.

Wherefore, these respondents pray that findings and a decree be made to the effect that these answering respondents be dismissed and that findings and a decree be made to the effect that these respondents have not violated the National Labor Relations Act in any particular and that the complaint be dismissed.

HOLTVILLE ICE AND COLD
STORAGE COMPANY

By F. A. WILLARD
President

State of California

County of Imperial—ss.

F. A. Willard, being first duly sworn, deposes and says:

That he is the president of the respondent Ice Company in the above entitled action, that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters, he believes it to be true.

F. A. WILLARD

Subscribed and sworn to before me this 25 day of January, 1943.

[Seal] C. B. SMITH

Notary Public in and for said County and State.

BOARD'S EXHIBIT No. 1-T

[Title of Board and Cause.]

ACKNOWLEDGEMENT OF SERVICE

On behalf of Holtville Ice and Cold storage Company Employees Association I herewith acknowledge receipt of the Complaint, Amendment to the Complaint, Notice of Hearing and Notice of Continuance of the Hearing in the above entitled matter.

Dated this 25th day of January, 1943.

**HOLTVILLE ICE AND COLD
STORAGE CO. EMPLOYEES
ASSOCIATION**

By M. K. STOUT, Secy.-Treas.

BOARD'S EXHIBIT No. 1-U

[Title of Board and Cause.]

ACKNOWLEDGEMENT OF SERVICE

The undersigned herewith acknowledge service of the Motion to Amend the Complaint in the above entitled matter, which is dated January 26, 1943, and signed by Charles M. Ryan.

Dated this 26th day of January, 1943.

HOLTVILLE ICE AND COLD
STORAGE COMPANY

By C. B. SMITH
ASSOCIATED FARMERS OF
IMPERIAL COUNTY

By R. B. WHITELAW
of Whitelaw & Whitelaw
HUGH T. OSBORNE

By R. B. WHITELAW
of Whitelaw & Whitelaw
HOLTVILLE ICE AND COLD
STORAGE COMPANY
EMPLOYEES ASSOCIATION

By RUSSELL YEAGER
CHAUFFEURS, TEAMSTERS
AND HELPERS,
LOCAL 898, A.F.L.

By ED ACHSTETTER

By S. MATHEWS

BOARD'S EXHIBIT No. 1-V

[Title of Board and Cause.]

MOTION TO AMEND COMPLAINT

Now comes Charles M. Ryan, attorney for the National Labor Relations Board, and moves to amend the Complaint in the above entitled matter as follows:

1. By inserting following Pargaraph 7 of the Complaint the following paragraph:

7(a) Respondent Holtville Ice and Cold Storage Company has been at all times since November 1, 1941 and is now, under written contract with Holtville Ice and Cold Storage Company Employees Association covering wages, rates of pay, hours of employment and other conditions of employment of employees of Respondent Holtville Ice and Cold Storage Company. Said contract is illegal and should be cancelled and set aside because of the acts of Respondents Holtville Ice and Cold Storage Company, Hugh T. Osborne and Associated Farmers as set forth in paragraph 7 of the Complaint and because Holtville Ice and Cold Storage Company Employees Association did not represent a majority of employees in an appropriate bargaining unit when the contract was entered into on or about November 1, 1941, and because Holtville Ice and Cold Storage Company Employees Association has never at any time represented an uncoerced majority of employees in an appropriate bargaining unit.

2. By striking the words "paragraph 7" from paragraph 8 of the Complaint and inserting in their stead the words "paragraphs 7 and 7(a)".

3. By inserting following the number "7" in line two of paragraph 15 of the Complaint the number "7(a)".

4. By inserting following the number "7" in line two of paragraph 16 the number "7(a)".

5. By inserting following the number "7" in line two of paragraph 17 the number "7(a)".

Dated this 26th day of January, 1943.

CHARLES M. RYAN

Attorney,

National Labor Relations
Board

BOARD'S EXHIBIT No. 1-W

[Title of Board and Cause.]

ANSWER OF HOLTVILLE ICE AND COLD
STORAGE COMPANY EMPLOYEES AS-
SOCIATION

Comes now the Holtville Ice and Cold Storage Company Employees Association, who in answer to the Amended Complaint in the above matter admits, denies and alleges as follows:

I.

Admits the allegations contained in paragraphs 1 (a), 1 (b), 1 (c), and 1 (d); denies the allegations of paragraph 1 (e).

II.

Admits the allegations of paragraph 2.

III.

The Employees Association has no information or belief regarding the allegations contained in paragraph 3 and for that reason denies the same.

IV.

The Employees Association has no information or belief regarding the allegations contained in paragraph 4 and for that reason denies the same.

V.

The Employees Association has no information or belief regarding the allegations contained in paragraph 5 (a) and for that reason denies the same; admit the allegations contained in paragraph 5 (b).

VI.

Denies specifically each and every allegation contained in paragraph 6 of the amended complaint.

VII.

Denies specifically each and every allegation contained in paragraph 7 of the amended complaint; referring to paragraph 7 (a), the Employees Association denies each and every allegation of said paragraph, except that said association admits that it has been since November 1, 1941, under written contract with the Holtville Ice & Cold Storage Company covering wages, rates of pay, hours of em-

ployment and other conditions of employment of the employees of said company.

VIII.

Denies the allegations contained in paragraph 8 of the amended complaint.

IX.

The Employees Association denies each and every allegation contained in paragraph 9 of the amended complaint, except that said Association does admit that during the slack season of 1941 said employees were temporarily taken off the payroll.

X.

Denies each and every allegation contained in paragraph 10 of said amended complaint.

XI.

The Employees Association has no information or belief concerning paragraph 11 of the amended complaint and for that reason denies the same.

XII.

Denies each and every allegation contained in paragraph 12 of said amended complaint.

XIII.

The Employees Association does not have any information or belief concerning the allegations contained in paragraph 13 of the amended complaint and for that reason denies the same.

XIV.

Denies the allegations contained in paragraph 14 of the amended complaint.

XV.

Denies the allegations contained in paragraph 15 of the amended complaint.

XVI.

Denies the allegations contained in paragraph 16 of the amended complaint.

XVII.

Denies the allegations contained in paragraph 17 of the amended complaint.

Wherefore, the Employees Association prays that findings and a decree be made dismissing this amended complaint herein and designating the Employees Association as the exclusive bargaining agent for the employees of the Holtville Ice & Cold Storage Company.

RUSSELL YEAGER

Attorney for the Holtville Ice
& Cold Storage Company
Employees Association

State of California

County of Imperial—ss.

M. K. Stout, being first duly sworn, deposes and says:

That he is an officer, to-wit: the Secretary-Treasurer of the Employees Association, Holtville Ice and Cold Storage Company, and that he makes this

verification for and on behalf of said Association; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein contained upon information and belief and as to those matters that he believes it to be true.

M. K. STOUT

Subscribed and sworn to before me this 8th day of February, 1943.

[Seal]

HAZELE LIVINGSTON

Notary Public in and for the said County and State.

United States of America
Before the National Labor Relations Board
Trial Examining Division
Washington, D. C.

Case No. 21-C-1985

In the Matter of

HOLTVILLE ICE AND COLD STORAGE COMPANY, ASSOCIATED FARMERS OF IMPERIAL COUNTY, and HUGH T. OSBORNE

and

TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS UNION 898, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, A. F. OF L.¹

Mr. Charles M. Ryan and Robert C. Moore,
for the Board.

Mr. Clarence B. Smith, of El Centro, Calif.,
for the respondent Ice Company.

Mr. R. B. Whitelaw, of El Centro, Calif.,
for the Associated Farmers and Hugh T. Osborne.

Mr. A. H. Petersen, of Los Angeles, Calif.,
for the A. F. of L.

Mr. Ed Achstetter, of El Centro, Calif.,
for the Union.

¹The evidence shows this to be the correct name of the Union.

INTERMEDIATE REPORT

Statement of the Case

Upon a third amended charge² duly filed by Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-First Region (Los Angeles, California), issued its complaint dated December 30, 1942, against Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County, and Hugh T. Osborne, herein collectively called the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices, the complaint as amended at the hearing alleged in substance that: (1) the respondents repeatedly from September 1, 1941, to the date of the complaint discouraged the employees of Holtville Ice and Cold Storage Company, herein called the Ice Company, from joining or retaining membership in the Union, by characterizing unions as "rackets," and union members as "racketeers" and "Communists"; by advising said employees that membership in a union would be of no benefit to them; by stating to said

²The original charge was filed January 3, 1942.

employees that the Ice Company would never recognize the Union; by threatening said employees with discharge if they joined or remained members of a union; by advising said employees to refrain from union activities, and by questioning said employees about their union activities; (2) the respondents on or about September 15, 1941, sponsored, promoted, assisted and interfered with the formation of the Holtville Ice and Cold Storage Company Employees Association, herein called the Association, and since that time have dominated, supported and interfered with the administration of the Association, and have coerced and encouraged the employees of the Ice Company to accept the Association as collective bargaining representative; (3) the Ice Company on specified dates in October and November 1941, discharged and has since refused to reemploy Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn because they joined and assisted the Union and engaged in concerted activities for their mutual aid and protection; (4) since November 1, 1941, the Ice Company has had a written contract with the Association covering wages, hours, and working conditions, and that such contract is illegal, because of the assistance rendered to the Association by the respondents, and because the Association did not represent a majority, or an uncoerced majority, of the employees in an appropriate bargaining unit at the time when the contract was executed; (5) on or about October 12, 1941, and at all times thereafter the respondents

refused and failed to bargain collectively with the Union (the Union having previously been designated as collective bargaining agent by a majority of the Ice Company's employees in the appropriate bargaining unit specified in the complaint); and (6) by the foregoing acts the respondents interfered with, restrained and coerced the Ice Company's employees in the exercise of rights guaranteed in Section 7 of the Act.

The complaint and accompanying notice of hearing were duly served upon the respondents, the Union, and the Association.

At the beginning of the hearing the respondents filed answers to the complaint. In their answers the respondents denied that they had committed unfair labor practices as alleged in the complaint, and pleaded certain affirmative defenses.

Pursuant to proper notice, a hearing was held January 25, 1943, and from February 8 to February 17, 1943, at El Centro, California, before Frank A. Mouritsen, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondents, the Association and the Union participated in the hearing either through counsel or representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the beginning of the hearing counsel for the Associated Farmers and Hugh T. Osborne objected to the entire proceeding upon the ground that the Board was without jurisdiction. The objection was overruled. At the conclusion of the hearing all

parties argued orally upon the record. The parties were advised that they might file briefs with the undersigned. No briefs have been received.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Respondents

A. Holtville Ice and Cold Storage Co.

The respondent Ice Company is a California corporation incorporated in 1926. Its office and place of business is located in Holtville, California, where it is engaged in the manufacture, sale and distribution of ice. During the year 1941 its monthly purchase of electric power and water approximately \$2800. Its sale of ice during 1941 totaled \$111,387. In 1942, the sales totaled \$139,339. Substantially all of the ice produced is sold to vegetable packing companies located in Holtville. The Ice Company owns and leases to the packing companies, to which it sells ice, packing sheds where the vegetables are packed and placed in railroad refrigerator cars for shipment. The ice sold to the packing companies is used to pack the vegetables and to ice the railroad cars. During the year 1942 the ice manufactured by the Ice Company was used by its packing customers to ice a total of 2,812 railroad cars, of which at least 75 percent were shipped out of the State of California.

The number of employees of the Ice Company varies from 5 or 6 during the slack season to be-

tween 25 and 35 during the peak of the shipping season.

B. The Associated Farmers
and Hugh T. Osborne

The Associated Farmers of Imperial County is a non-profit corporation organized and existing under the laws of the State of California since 1936. The purposes for which it was formed, as set out in the copy of its Articles of Incorporation, filed in the evidence, are:

To protect, preserve and maintain American Institutions and ideals; to preserve the constitutional form of Government in both Nation and State; to oppose and combat and all doctrines or practices which imperil the maintenance [sic] of these constitutional liberties; to protect American Schools and the constitutional privileges [sic] which the educationay system of America has brought to all children; to fight against the infiltration of subversive doctrines into the educational system and into the Government; to combat the dictatorship of individuals or groups; to foster and encourage respect for and to maintain law and order, particularly by cooperation with local, state and national official and governmental agencies; to promote the prompt, orderly and efficient [sic] administration of justice; and to promote and protect the economic [sic] and agricultural welfare of the citizens of the United States and particularly of the Citizens of California.

The activities which led to the organization of the Associated Farmers are set out in the certificate of the Secretary of the organization attached to the Articles of Incorporation as follows:

That the organization came into being as a result of a series of disturbances in the agricultural districts of the State; investigation of these disturbances showed conclusively that, almost without exception, the disturbances were caused and fomented by radical and/or communistic agitators, [sic] who came into the agricultural districts of the State with the avowed purposes of bringing about so-called labor troubles among [sic] the workers.

That these agitators were affiliated directly with or were members of the Communist Party, U.S.A. and/or The Trade Union Unity League, and/or the Cannery and Agricultural Workers Industrial Union or similar organizations, affiliated with, subsidiary to or sympathetic to these organizations.

Membership in the Associated Farmers is not restricted to farmers, and it numbers among its members many of the business and professional people of the Imperial Valley. The Ice Company has been a member of, and a contributor to, the Associated Farmers since 1936. The Associated Farmers is entirely dependent upon contributions of its members for its income. Hugh T. Osborne has been secretary-manager of the Associated Farmers since July 1937.

The Associated Farmers have been instrumental in setting up a number of unaffiliated labor organizations among the employees of different business concerns in the Imperial Valley.

II. The organizations involved

Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and **Holtville Ice and Cold Storage Company Employees Association**, are labor organizations admitting to membership employees of the Ice Company.

III. The unfair labor practices

A. The background of the unfair labor practices

The employees of the Ice Company first became interested in union organization in April or May 1941. At that time a number of them visited the office of the Union in El Centro, and made some inquiries, but took no further action. The Ice Company operates as a general rule from the first of November of one year until July or August of the following year, and between August and November operations are greatly curtailed. During these slack periods the Ice Company attempts to give its regular employees as much maintenance work as possible in order to hold them together. During the summer of 1941 there was an unusual amount of work to be done around the plant during the slack season, as the Ice Company was changing from Diesel to electric power, and the Diesel engines had to be removed,

and electric motors installed. The installation of the electrical equipment and some of the remodeling incident to the change in the method of operation were done by contractors who employed union help exclusively. The employees of the Ice Company who performed maintenance work around the plant, some of whom were hired by the contractors, noted the disparity between the wages paid under the union scale and those which they received from the Ice Company. The union employees of the contractors also did some proselyting among the employees of the Ice Company, and interest in organization revived. On September 26, 1941, a number of the Ice Company employees visited the Union office in a body, and after voting among themselves to designate the Union as collective bargaining agent, about 10 of them signed applications for membership in the Union which also granted the Union authority to represent them for the purposes of collective bargaining.³ Shortly thereafter a number of the employees who applied for membership in the Union were laid off. Between the time when the employees applied for membership in the Union and the time when the Ice Company commenced operations on October 29 the Association was formed. The Ice Company and the Association executed a collective bargaining contract dated as of November 1, 1941, covering wages, hours and working conditions. They executed a similar contract as of No-

³The efforts of the Union to bargain with the Ice Company on the basis of such authorizations is discussed hereinafter.

vember 1, 1942, which was in effect at the time of the hearing.

The supervisory employees of the Ice Company whose activities are considered hereinafter are F. A. Willard, president, Herman Smith, office manager, and Pete Pool, superintendent.

B. Interference, restraint and coercion
by the Ice Company

It is apparent that Pete Pool, superintendent of the ice plant, learned that the employees had made application for membership in the Union shortly after it occurred. Within a day or so he questioned a number of the employees about their membership in the Union. He told employee L. C. Hart that Willard was "sure mad" because the employees had joined the Union. After asking employee Perry T. Blankenship if he had joined the Union and receiving an affirmative reply, he told Blankenship that the Union did not have a chance because the men who did the hiring were "a jump ahead" of the unions, and that he did not think they would ever make a success of it. After learning from his brother Herman T. Pool that he had joined the Union, Pete told him that he did not think it was "a very good idea," and added that Willard could get plenty of non-union men to operate his plant. Later after he had told Herman that he would not be employed during the next season, Pete asked him if he were still with the Union. When Herman replied that he was "going to ride it through," Pete told him, "You are just riding a blank train." After

questioning the employees, Pete Pool reported to Willard that the plant had "gone union."

Herman Smith, office manager of the Ice Company, also learned that the employees had made application to join the Union. On the morning after the employees signed the application blanks on September 26, he called employee L. H. Davis into the office and asked him what he knew about the men joining the Union. Davis said that he knew of the meeting the night before, but that he had not attended because of a prior engagement. He told Smith that he had heard that some of the men joined, but that he did not know how many or who they were.

The acts of Pool and Smith in questioning the employees about their union membership and Pool's attempts to discourage affiliation with the Union constitute interference, restraint, and coercion within the proscription of the Act.

C. The formation of the Association; interference, restraint and coercion by the Associated Farmers and Hugh T. Osborne

Shortly after Willard learned from Pete Pool that the employees had joined the Union, he called Hugh T. Osborne, secretary-manager of the Associated Farmers, and informed him that he was having some labor trouble at the plant. Osborne informed Willard that he knew all about the Union drive and promised to come to the plant to confer about it. Within the next day or so Osborne met with Willard at the plant. According to Osborne, Willard

was perturbed by the fact that his employees had joined the Union and asked Osborne what he should do. Osborne told Willard that he himself could do nothing about it without violating the Act. During the conference the formation of an unaffiliated organization was discussed, and according to Willard, Osborne told him that one of the concerns in the vicinity had had "difficulties" and thereafter the employees had formed their own union. Willard asked Osborne to "interest" himself in the situation, and Osborne promised to make an investigation. Shortly after this talk with Osborne, Willard conferred with R. B. Whitelaw, counsel for the Associated Farmers, about the "disturbance" at his plant.

Within a few days after his talk with Willard, Osborne questioned a number of the employees, including Tom Herring, George Harlan, Herman T. Pool and L. H. Davis, about their reasons for joining the Union, and suggested to some of them that they form an unaffiliated organization. Pool testified that when Osborne called on him he stated, "I'm connected with the Associated Farmers. I'm not going to let you bring the union into the Valley." Osborne presented arguments against joining the Union, cited an example of help given to the employees of one of the packing sheds by the Associated Farmers, and then advised Pool as follows, "If you are not too far in, think it over and back out." Pool said that he would think it over. Osborne denied that he had made the statements attributed to him by Pool. Inasmuch as Osborne's

testimony was inconsistent in many respects, the undersigned credits Pool's testimony.

Osborne questioned Davis about the reasons why the employees joined the Union. Davis told him that the men were dissatisfied with the wages they received, and that the disparity between their wage rates and the union scale had been demonstrated to them by the wages paid the union employees who helped in the installation of the electrical equipment. Osborne suggested the formation of a company union. Davis demurred, saying that a company union would have no power. Osborne then stated that the Associated Farmers were against organized labor, because it meant the closed shop, which was un-American. Then he said that Willard would close the plant down before he would deal with the A. F. of L., at the same time disclaiming that he had discussed the matter with Willard personally. Davis replied that he would stay with the others until the majority agreed to withdraw from the Union.

When Osborne spoke to Harlan, Harlan told him that some of the men had joined the Union. He added that he was not in favor of the Union, although he had signed an application blank which he had not turned in, and asked Osborne what he could do to keep from going into the Union. Osborne suggested the formation of an unaffiliated union, named a plant where such an organization had been formed, and agreed to give Harlan a copy of its constitution and bylaws. He gave Harlan these documents a few days later. Herring testi-

fied that he talked with Osborne about the formation of an unaffiliated association and that he gave Osborne the names of employees he thought would be interested in the formation of such an association. He gave him, however, the names of employees who had made application to join the Union.

During this same period Keith Metz, a director of the Associated Farmers, sought out employee Henry G. Miller, and advised him not to join the Union. He stated that since Miller was a landowner, it would not pay him to join the Union, as his credit would thereby be impaired. Metz stated further that Willard would be glad to have the employees form their own union, and that the Associated Farmers would be glad to be of assistance. He urged Miller to talk to Osborne with regard to the formation of an employees' union. Miller declined to go with him to see Osborne. The inference is warranted, in view of Metz's statements to Miller, that he talked with Miller at the behest of Osborne.

Osborne at first denied and then admitted that he reported back to Willard after questioning the employees. Osborne also admitted that he referred the employees to Whitelaw, then as now counsel for the Associated Farmers, for legal advice and assistance in setting up the unaffiliated association.

After Osborne's talks with them, Harlan, Stout and Herring, did go to Whitelaw and he assisted and advised them in the formation of the Association. About October 20 Stout, Harlan, Ireland, Drinkard, and one or two others, met at the home of Harlan and discussed the formation of the Association. Os-

borne was present and outlined the procedure to be followed.

On October 30 the Association held its first meeting, elected officers and a bargaining committee, and discussed the drafting of a collective bargaining contract to be submitted to Willard. Later a contract was negotiated with the Ice Company. About November 25 the contract was signed and was ante-dated to November 1. Whitelaw assisted the Association in the negotiation of the contract, which provided for exclusive recognition of the Association as collective bargaining agent and contained a provision, suggested by Whitelaw, that after a 15-day period all new employees hired by the Ice Company should become members of the Association in order to continue to work at the plant. On the occasion when the negotiating committee from the Association first met with Willard, Osborne was present, and introduced the committee to Willard as a bargaining committee of the Association, and stated that they desired to bargain with him. At that time Willard readily agreed to bargain with the committee, and accepted without question their unsupported claim to represent the employees despite the prior conflicting claim of the Union that it represented the employees.⁴

⁴It appeared to the undersigned that Stout, Herring and Harlan were straining to make it appear that the Association claim to represent the employees ante-dated that of the Union, which was made October 28. Stout's testimony as to the time when the first Association request to bargain was made of Willard is conflicting. At one point he said it was

From the foregoing it is clear that Osborne initially suggested the formation of the Association. In making this finding the undersigned is not unmindful of the testimony of Stout and Harlan to the effect that the idea of forming an unaffiliated association originated among the employees themselves. That testimony is not convincing, however, as it is inconsistent with other portions of their own testimony as well as that of Osborne and other witnesses. It is clear that Osborne's assistance in forming the Association was not given in point of time until after he had been requested by Willard to "interest" himself in the activities of the employees. If Willard himself had assisted the Association as Osborne did, there would be no question but that the Association is company-dominated. The acts of Osborne done at the request of Willard are no less attributable to Willard. Osborne was clearly acting at the request and in the interest of the Ice Company, and resultantly is an employer within the meaning of the Act.

There was no contention that Osborne was not acting as an authorized agent of the Associated

not made until after the formation of the Association on October 30. This is corroborated by the minutes of the first meeting of the Association. Later he said that an earlier request was made. In view of his conflicting testimony, and the additional fact that Willard on October 28 made no mention of any Association claims to the Union representatives, as he later did after the formation of the Association when requested by the Union to bargain, the undersigned finds that the Union claim to represent the employees antedated that of the Association.

Farmers in assisting the Association, although this contention was raised regarding Metz' activities. It has been inferred that the acts of Metz in talking to Miller were undertaken at the request of Osborne. The undersigned finds that the Associated Farmers are responsible for the Acts of Osborne and Metz. Osborne, representing the Associated Farmers, acted with reference to the Association at the request of Willard. The undersigned finds therefore that the Associated Farmers and the Ice Company are responsible for the acts of Metz and Osborne in assisting in the formation of the Association. By their acts of assistance to the Association all respondents have dominated and interfered with the formation of the Association, and have interfered with, restrained and coerced the Ice Company's employees in the exercise of the rights guaranteed in Section 7 of the Act. The Ice Company, the Associated Farmers, and Osborne should cease their acts of interference with the rights of the employees guaranteed by the Act. The Association which is a result of such acts of interference and assistance, is incapable of serving the employees as a true collective bargaining agent and should be disestablished.

D. The alleged refusal to bargain with the Union

1. The appropriate unit

The complaint alleged that all employees of the Ice Company, exclusive of supervisory and clerical employees constitute an appropriate bargaining unit. The Ice Company does not operate the entire

year. As a general practice it commences the manufacture of ice about the first of November each year, with what Willard termed his "regular" crew. From the beginning of November until about the first of January this crew is engaged in the manufacture and storage of ice, and but a small amount of ice is delivered during this period. Heavy delivery of ice to the packing sheds commences about the first of January each year and continues until May or June. Additional employees are added at the time when heavy delivery of ice starts, and the number of employees is thereafter increased as the delivery of ice increases. In the 1940-41 season which began about November 1, 1940, the Ice Company commenced operations with 19 employees. By January 15, 1941, the number had increased to 22, by February 1, to 27, and it remained fairly constant around that figure until the middle of May when it increased to 35. In July, which was the last month of the season, the number dropped to 25.

Counsel for the Board contended that the employees who commenced the season constituted the appropriate bargaining unit, and the employees who were employed after the start of the season should be excluded. Concerning the employees who started the season Willard agreed that they were "regular, normal" employees, and testified that the Ice Company attempted to hold them together by giving them maintenance work around the plant after the close of the ice shipping season. He testified that the extra employees who were put on for a

couple of weeks or so during the peak season were laid off the end of the peak season, and it was more or less according to chance whether they worked the following season.

The Ice Company contended that temporary employees, including a number of electricians, who were hired only for the purpose of installing the electrical equipment in the summer of 1941, be included in the appropriate unit. The electricians were hired admittedly for the installation work only, and did not engage in the manufacture or distribution of ice. They should be excluded from the unit. The other temporary employees were hired only for short periods of a few weeks during the peak of the ice season, and the Ice Company felt no obligation to give them employment the succeeding season. They also should be excluded. The Ice Company did not oppose the exclusion of supervisory and clerical employees from the unit, and they should be excluded as well.

In addition to the above, however, the records show that there were other employees commencing work during the winter who worked steadily for periods ranging from 2 to 7 months, who had been employed in previous seasons for about the same length of time, and who could have had a reasonable expectation of being reemployed in the following season. The undersigned rejects the contention of Board's counsel that only those employed at the commencement of the season should constitute the appropriate unit and concludes that these employees likewise should be included therein. Details were lacking

to show exactly how many employees would have been in the larger unit found to be appropriate. Although 13 employees had indicated, either by signing authorization cards or by payment on account of initiation fees, their designation of the Union as their bargaining agent, two of these had voluntarily left the Ice Company's employ before the commencement of the 1941-42 season and a third admittedly held a supervisory position and would have to be excluded from the unit.

Although the Union might have had a majority of the men who started the season either in 1940 or 1941, the evidence fails to prove that it had a majority of the much larger unit herein found to be appropriate. It is extremely doubtful that, had evidence of the size of the larger unit been clearly adduced, the Union would have proved a majority. Because therefore, of the failure of proof in regard to the size of the appropriate unit and consequently the failure of proof that the Union had a majority therein, the undersigned finds that the respondent Ice Company did not refuse to bargain with the Union within the meaning of the Act.

E. Discriminatory discharge of Standifer, Hart, Davis, Fredenburg, Blankenship, Pool, and Fruhn

The Board alleges that the above employees were discharged by all respondents on specified dates in October and November 1941 and have since been

refused reinstatement because they joined and assisted the Union. The Associated Farmers and Osborne denied the allegations, and asserted that they had no authority directly or indirectly to discharge the employees named. In its answer the Ice Company denied the above allegations of the complaint. Affirmatively it alleged that Standifer was laid off on October 3, because of lack of work, and that he never applied for reinstatement; that Hart was a repair mechanic, and that the Ice Company no longer required the services of a repair mechanic after the change from Diesel to electric power; that Willard decided to discontinue the services of Davis about a year prior to his discharge, and that neither Willard nor Smith knew of Davis' membership in the Union prior to his discharge; that Fredenburg was laid off in October 1941 because of lack of work, and that he did not thereafter apply for reinstatement; that Blankenship was laid off because of lack of work, and undoubtedly would have been reinstated had he applied for reinstatement at the commencement of the shipping season, but that he never did apply; that Herman T. Pool was laid off by his brother Pete Pool, because Pete Pool had been advised that it was against the policy of the Ice Company to employ his relatives, and that Herman T. Pool never did apply for reinstatement; and that Herman Fruhn was laid off because of lack of work on July 31, 1941, was reinstated in December 1941, worked one day and quit of his own accord.

All of the above employees except Davis applied

for membership in the Union and designated it as their collective bargaining agent on September 26, 1941; Davis did so on October 3. In view of Pete Pool's admission that he questioned the employees about their union membership, and later reported to Willard that the plant had "gone union", and in view of the fact that Osborne acquired the names of the Union applicants, questioned them, and reported back to Willard, the undersigned finds that Pool and Willard had knowledge of the fact that the above employees had applied for membership in the Union immediately after they did, rejecting the sole denial that they had such knowledge in the case of Davis. Pete Pool and Willard determined which employees should be recalled to work when the plant resumed operations on October 29, 1941.

From Osborne's testimony that Willard was "perturbed", and Pete Pool's testimony that Willard was "sure mad" because the employees joined the Union, as well as by the fact that upon learning that they had taken such action Willard immediately called Osborne, who had earlier assured him of the help of the Associated Farmers in the event of labor disturbances, and asked that he interest himself in the situation, the undersigned finds that Willard was disturbed and dismayed that his employees had joined the Union, and sought to combat such activity.

Herman T. Pool worked steadily for the Ice Company, except for brief lay-offs in 1937 and 1938, from 1935 to the date of his discharge in the second week of October 1941. Prior to 1935 he had worked for

the Ice Company for short periods in 1929 and 1931. Successively he had been promoted from laborer in the storeroom to crane operator and finally to engine operator. Willard testified that he decided about a year before Pool's discharge to terminate his services because he had received complaints that the employees thought Pete Pool was favoring him in various ways. Willard named Herman Smith as the source of his information regarding the complaints. Neither Willard nor Smith gave the names of any employees who made such complaints. Pete Pool had been superintendent since 1939, more than 2 years before Herman's discharge, and he denied that he had favored Herman in any way.

Herman applied for membership in the Union on September 26, 1941, with the other employees. Pete learned of that fact a day or so later and told Herman that it was not a very good idea and that Willard could get plenty of non-union men to operate the plant. On October 1 Herman went on his vacation, at the instruction of Pete. At that time Pete said nothing to him about his discharge. While he was on vacation he was advised by Osborne to get out of the Union; he told Osborne he would think it over. Later, his brother Pete told him of the decision to discharge him. Some time thereafter Pete asked Herman if he were going to stick by the Union, and when Herman said that he was, Pete told him that he was riding a "blank train." Herman was the only employee discharged allegedly because of the rule against relatives working at the plant,

and Harlan, who was related by marriage to Pete Pool worked for the Ice Company after that time. The record does not show that the no-relative rule was conceived prior to the time when Herman had applied for union membership. Employees with no experience were given the job of crane operator, or "canpuller," in preference to Herman, who had considerable experience in that work. Employees who had not been given maintenance or repair work during the slack season, which Willard testified was given for the purpose of insuring the return of his regular employees, were retained in the employ of the Ice Company in preference to Herman, who had been given such maintenance work for several seasons, including the one just prior to his discharge. The discriminatory invocation of the no-relative rule, shortly after Pete Pool learned of his brother's application for membership in the Union, and directly following Herman's failure to accede to Osborne's request that he leave the Union, convinces the undersigned that the real reason for his discharge was the fact that he had applied for membership in the Union.

At the time of his discharge in October 1941, L. H. Davis had been in the employ of the Ice Company since 1932. During the ice shipping season he had charge of the delivery of ice to the packing sheds and assisted Herman Smith in the office. During the slack season he sold ice to customers who came to the plant and continued to work in the office. As noted, the Ice Company contended that he was discharged because there was little work for him to do

during the slack season. His discharge at the end of the slack season runs contrary to that contention. At the hearing, the Ice Company also contended that Davis' employ was terminated in order to cut down on the plant overhead. The work which Davis performed was taken over by employees Tom Herring and Jack Garber. Garber, who performed some of the office work done by Davis, was a new employee first hired on a part-time basis on September 1, 1941. He was kept on during the entire slack season in the summer of 1942. For his work on the platform during 1942, Herring's salary exceeded that paid Davis.

Davis applied for membership in the Union on October 3. Of all the employees who joined the Union the Ice Company denied only that it had knowledge that Davis had joined. However, that denial is not convincing. After the other employees applied for membership on September 26, Herman Smith questioned Davis about the Union meeting. Pete Pool questioned the employees who had applied for membership. Before he was informed of his discharge, Davis had rejected Osborne's suggestion that he form a company union, and had informed him of his determination to remain in the Union. The undersigned believes and finds that Osborne reported the results of his conference with Davis to Willard and Smith. Davis' work was admittedly very satisfactory.

Willard testified that he had decided to let Davis go at the beginning of the slack season in the summer of 1941, and had instructed Smith to that effect

before he left for the summer. When he returned to the plant in September he found that Smith had not carried out his instructions, and again told Smith that Davis was to be discharged. This testimony is rendered improbable by the fact that Davis was not discharged upon Willard's return, but over a month later, after the Ice Company had learned of his application for membership in the Union, and after he had advised Osborne that he would remain with the Union. It was just a short time after his conversation with Osborne that Davis was informed of his discharge. The undersigned finds that Davis was discharged because he made application for membership in the Union, and not because of the seasons advanced by the Ice Company.

In point of service Herman Fruhn was one of the oldest employees of the Ice Company. He started working for the Company as a crane operator in 1929 and continued to do that work until his lay-off in July 1941. After his lay-off he continued to work around the plant for Manchester, the contractor who did some of the work incident to the change-over to electric power.

Fruhn applied for membership in the Union on September 26. The Ice Company did not deny that it had knowledge of his application, and in view of Pete Pool's questioning of the employees about who attended the Union meeting on September 26, the undersigned finds that Pool had such knowledge. When Fruhn applied to Pool for his old job within a short time before and after the plant commenced

operations in October 1941, and asked when he should go back to work, Pool put him off saying that it was not yet time for him to go to work. Finally, after continued appeals to Pool, Smith and Willard, Fruhn was given work as a laborer in the storeroom. There the work was so heavy that he was able to complete but one shift and that only with the help of his son, whom he called in to assist him. Thereafter, when he requested Pool to give him his old job back, Pool ignored his request.

In its answer the Ice Company stated that Fruhn's work was satisfactory. At the hearing, contrary to the allegation in its answer, the Ice Company contended that Fruhn was not given his old job back in October 1941 because he tinkered with the crane that he operated and got it out of adjustment. Willard testified that Fruhn had tinkered with the crane for years, yet neither he nor Pool claimed that Fruhn had ever been warned not to tinker with the crane or that they disapproved of it. At no time prior to the hearing was Fruhn advised that the reason for the failure to reinstate him was his tinkering with the crane. Because of the foregoing facts the undersigned does not credit the testimony that Fruhn was not rehired because he tinkered with the crane. Several of the men who replaced Fruhn as a crane operator in 1941 had no experience in operating the crane; as noted, Fruhn had given 11 or 12 years of satisfactory work in that job. The undersigned finds that Fruhn was not given his old job back because Pool learned that he applied for membership in the Union. This finding is not disproved by the

fact that Fruhn was later given work in the storeroom. The work in the storeroom was heavy work demanding strong men. Fruhn was a slight, thin individual. It was apparent to the undersigned, as it was to the Ice Company, that Fruhn could not perform that work.

The cases of Herman T. Pool, Davis, and Fruhn follow a common pattern. In each case an employee who has given long years of satisfactory service was discharged or refused work for alleged reasons which do not stand up under scrutiny.

Lester C. Hart, the oldest employee in point of service, commenced his employment with the Ice Company in 1926. He was first a laborer, then a crane operator, next an engine operator, and finally was made plant mechanic, the position he held at the time of the termination of his employment in October 1941.

Hart signed an application for membership in the Union on September 26 with the other employees. The next day, Pete Pool told them that Willard was "sure mad" because the employees joined the Union. A few days later Pool told Hart to go on his vacation. At that time Pool gave no indication that Hart would not be put back to work at the end of his vacation, and the work that Hart was doing had not been completed at that time. During this same period Pool asked Hart if the employees were trying to "blackball" him in that they did not tell him that they were going over to join the Union, adding that

he would like to have gone also.⁵ It is clear that Pool knew that Hart had made application to join the Union.

When Hart returned to the plant from his vacation, he punched his time card, then sought Pool and asked him what he should do. Pool told him that Willard had instructed him to lay everyone off, and Hart went home. At that time the work which Hart had been doing before his vacation had not been completed. Subsequently this work was sent out of the plant to be completed. Hart thereafter applied to Pool for reinstatement on numerous occasions without success.

The Ice Company contended that Hart's services were terminated because there was no need for the services of a repair mechanic after the change from Diesel to electric power. This appears to be contrary to the facts. At the time when Hart was laid off after his vacation, the work he had been doing was not completed. According to Pool's testimony he did part of the work formerly done by Hart, and part of such work was sent out of the plant to be done. While the amount of repair work undoubtedly decreased after the Diesel engines were eliminated, the undersigned is not convinced that it decreased to the point where need for the services of a repair mechanic were eliminated altogether. While operating with Diesel power the Ice Company had required two repair mechanics. Wooldridge, the

⁵In view of Pool's anti-union statements, both before and afterwards, the undersigned finds that on this occasion Pool was merely being facetious.

other mechanic, had quit the employ of the Ice Company, so that Hart was the only one left. Hart had done electrical work at the plant prior to the change-over. The fact that Hart was the oldest employee of the Ice Company in point of service; that he had performed satisfactorily practically every duty in the plant; that he was not offered work in any other department, in combination with the fact that there remained mechanical and electrical work to be done, convinces the undersigned that Hart's services were terminated because he applied for membership in the Union.

Arthur Standifer was first employed by the Ice Company in January 1936. He worked for 2 years in the storeroom, for over 2 years as a crane operator, and during part of the last season he worked he was the relief engine operator. During the summer of 1941 and up to October 3 he did repair and maintenance work around the plant.

Standifer signed an application for membership in the Union on September 26. The Ice Company did not deny that it had knowledge of the fact that Standifer made such application, and the undersigned finds that it obtained such knowledge through Pool's questioning of the employees.

In its answer the Ice Company alleged that the work Standifer was doing was completed on October 3. Standifer testified that the work he was doing was not completed at that time, and this testimony is credited over Pool's testimony to the contrary, in view of the corroborative testimony of Hart to the effect that the repair and maintenance work was

not completed some 10 days later, which testimony was not denied. The *The Ice Company's* answer also alleged that Standifer never applied for reinstatement. This appears to be an invalid contention in view of the customary practice that the Ice Company followed in notifying its regular employees to report for work in the event they were not present when the plant started or when their services were needed. In any event, Standifer's testimony that he did apply to Pool for reinstatement is undenied, and is credited, as is Standifer's testimony that he talked to Pete Pool and Herman Smith on a number of occasions both before and after the plant started operations in October 1941, so that they knew he was available for work. Willard testified that work was available which Standifer could do, but that he and Pool selected men they thought were better fitted to do the work. It has been pointed out that employees were put on as crane operators who had no previous experience in that work. Standifer had almost 3 years' experience as a crane operator. Some of the men given the crane operating jobs in the 1941-42 season had little or no experience. Men who had never worked for the Ice Company before were selected to work in the storeroom in preference to Standifer. Under these circumstances the undersigned finds that Standifer was discharged on October 3, and was later refused reinstatement because he made application to join the Union on September 26.

Perry T. Blankenship was first hired by the Ice Company to work in the storeroom in May 1940.

He worked till July, when he was laid off. He was again employed in September 1940 as a crane operator. During the last part of the season in the summer months of 1941 he worked as a relief crane operator and was a relief engine operator. After his lay-off in July he worked at short periods for the Ice Company and for the contractors who were doing the work incident to the change-over from Diesel to electric power.

He applied for membership in the Union with the other employees on September 26. Within a day or so, Pete Pool asked him if he had joined the Union. When replied that he had, Pool told him that the Union "didn't have a chance."

The Ice Company's answer alleges that Blankenship never applied for reinstatement. Blankenship testified that in October before the plant commenced operations he asked Pool when he could go back to work, and that Pool ignored his request. This was not denied by Pool, and is credited by the undersigned. Failure to put Blankenship back to work as a crane operator would hardly be conclusive of the fact that he was being denied work because of his Union activities, in view of the fact that he had been with the Ice Company for only two seasons, although it seems logical that he would be better qualified to perform such work than those who had never done it. However, the fact that entirely new employees and employees with much less experience were given work in the storeroom in preference to Blankenship convinces the undersigned that Blank-

enship was not reinstated because Pool learned that he had applied for membership in the Union.

Henry C. Fredenburg first started to work for the Ice Company in November 1937. He first worked as a laborer, and then became a truck driver, which was the type of work he was doing at the time of his lay-off in October 1941. During the slack season he delivered clear ice on an established route; during the busy season he delivered ice to the vegetable packing sheds.

On September 26 he joined the Union with the other employees. A few days later Pete Pool asked him if he had joined the Union and he replied that he had.

In its answer the Ice Company stated that Fredenburg would undoubtedly have been reinstated had he applied at the commencement of the vegetable shipping season, but that he never applied. At the hearing Willard admitted that Fredenburg applied to him for reinstatement, and did not dispute Fredenburg's testimony that the application was made in December, which would be just before the commencement of the vegetable shipping season. His request for reinstatement was denied. Shortly thereafter the Ice Company hired an entirely new employee in preference to reinstating Fredenburg. Such evidence clearly establishes the discriminatory refusal to reinstate Fredenburg. The undersigned finds that Fredenburg was denied reinstatement because of the fact that he had applied for membership in the Union.

In making the above findings the undersigned has taken into consideration the fact that because of the change-over from Diesel to electric power the jobs of six or seven employees would be eliminated. However, before the plant commenced operations in October 1941, four or five employees who started the preceding season quit and thus eliminated themselves from consideration. While the pay rolls during the first half of 1942, indicate that the Ice Company employed, on the average, 6 or 7 fewer men, the pay rolls for that period also disclose that no fewer than 5, and at times as many as 11 or more, new men were used. In other words, there appears to have been steady work from January 15, 1942, to July 15, 1942, for no fewer than five new men. By hiring entirely new employees and employees with limited experience in preference to the more experienced and satisfactory employees listed above, the Ice Company defeated its contention that such employees were not reinstated because of lack of work.

In considering whether the above employees were discharged or refused reinstatement because of their Union activities, the undersigned is of the opinion that some weight is to be given to the fact that Fruhn was the only employee who had applied for membership in the Union and who had remained steadfast in his views who was employed to work during the following season. As noted, Fruhn was given heavy work which he had not done before and which he obviously could not do. On the contrary those who did not join the Union, or those who, hav-

ing applied for membership, thereafter actively promoted the Association were given steady employment and the preferred jobs. Through Pool's questioning of the employees about their Union membership and through Osborne's activities against the Union and in favor of the Association, the Ice Company was clearly informed as to which of the employees remained steadfast with the Union, and which employees were willing to go along with the Association. Despite Willard's and Pool's denials, the undersigned is convinced that this was one of the factors which determined which of the employees were to be recalled to work in the season beginning October 29, 1941.

The proof does not support the allegation that the respondents other than the Ice Company discriminated against the above employees in regard to their hire and tenure of employment.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondent Ice Company described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondents have engaged in certain unfair labor practices, the undersigned

will recommend that they be required to cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondents have dominated and interfered with the formation of the Association and have contributed support thereto. The effect and consequences of the respondents' domination of, interference with, and support of the Association, as well as continued recognition of the Association by the Ice Company as the bargaining representative of its employees, constitutes a continuing obstacle to the free exercise by its employees of the rights guaranteed to them in the Act. Because of the respondents' illegal conduct with regard to it, the Association is incapable of serving the Ice Company's employees as a genuine collective bargaining agency. Accordingly, it will be recommended that the Ice Company withdraw all recognition from the Association and completely disestablish it as the representative of any of its employees for the purposes of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of work, or other conditions of employment. The contracts dated November 1, 1941, and November 1, 1942, between the Ice Company and the Association are invalid since they are a means whereby the Ice Company utilizes an employer-dominated labor organization to frustrate self-organization and to defeat collective bargaining by its employees. Moreover, they provide for exclusive recognition of the Association, al-

though at the time the contracts were made that organization had not been designated by an uncoerced majority of the employees covered by the contract as their representative for the purposes of collective bargaining. The undersigned will recommend that the Ice Company cease and desist from giving effect to these or any other agreement with the Association in respect to rates of pay, wages, hours of work, or other conditions of employment. Nothing in these recommendations, however, shall be deemed to require the Ice Company to vary or abandon the wage rates or other substantive features of its relations with its employees which the Ice Company may have established in conformity with the contracts, as extended, renewed, modified, supplemented, or superseded.

The Associated Farmers and Hugh T. Osborne have dominated and interfered with the formation of the Association, and contributed support thereto. Such activities were carried on in order to forestall organization by a legitimate labor organization. It will be recommended that the Associated Farmers and Hugh T. Osborne cease and desist from such activities, and that they inform their members and contributors of such injunction.

It has been found that the Ice Company discriminated in regard to the hire and tenure of employment of Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn because they applied for membership in the Union. It will be recommended that the Ice Company offer to those

employees immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, dismissing if necessary new employees hired since the date of the Ice Company's discrimination against the above employees, and make them whole for any loss of pay each has suffered by reason of the discrimination against him from the date of the Ice Company's discrimination against him to the date of the Ice Company's offer of reinstatement, less his net earnings⁶ during said period.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and Holtville Ice and Cold

⁶By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

Storage Company Employees Association, are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondents Associated Farmers of Imperial County, and Hugh T. Osborne, are employers of the employees involved herein, within the meaning of Section 2 (2) of the Act.

3. By interfering with, restraining, and coercing the employees of the Ice Company in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. By dominating and interfering with the formation of the Association and by contributing support to it, all the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn, the respondent Ice Company has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

7. The respondents have not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

8. The respondents Associated Farmers of Imperial County and Hugh T. Osborne have not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

RECOMMENDATIONS

Upon the above findings of fact and conclusions of law, the undersigned recommends that:

1. The respondent Holtville Ice and Cold Storage Company, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Dominating or interfering with the formation of the Holtville Ice and Cold Storage Company Employees Association, or with the formation and administration of any other labor organization of its employees and from contributing support and assistance to said Association or to any other labor organization of its employees;

(2) Giving effect to the contract of November 1, 1942, with the Holtville Ice and Cold Storage Company Employees Association, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract;

(3) Discouraging membership in Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or in any other manner discriminating in

regard to their hire and tenure of employment or any term or condition of employment;

(4) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act;

(b) Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(1) Withdraw all recognition from Holtville Ice and Cold Storage Company Employees Association, as the representative of any of its employees for the purposes of dealing with the respondent Ice Company concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment and completely disestablish the Association as such representative;

(2) Offer to Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(3) Make whole Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn, for any loss of pay they may have suffered by reason of the respondent Ice Company's discrimination

against them by payment to each of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings⁷ during said period;

(4) Post immediately in conspicuous places in its plant and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent Ice Company will not engage in the conduct from which it is recommended that it cease and desist herein; (2) that the respondent Ice Company will take the affirmative action herein recommended; and (3) that its employees are free to remain or become members of Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and that the Ice Company will not discriminate against any employee because of such membership or activity;

(5) File with the Regional Director for the Twenty-first Region (Los Angeles, California), within ten (10) days from the receipt of this Intermediate Report a report in writing setting forth in detail the manner and form in which it has complied with the foregoing recommendations.

2. The respondents Associated Farmers of Imperial County and Hugh T. Osborne, their officers, agents, successors and assigns, acting in the interest of the respondent Ice Company, or in the interest of any other employer, shall:

⁷See footnote 6, *supra*.

(a) Cease and desist from:

(1) Dominating or interfering with the formation of Holtville Ice and Cold Storage Company Employees Association, or with the formation or administration of any other labor organization of the employees of the Ice Company, or any other employer, and from contributing support and assistance to said Association, or to any other labor organization of the employees of the Ice Company, or of any other employer;

(2) Soliciting and collecting funds from the respondent Ice Company, or from any other employer, to be used in whole or in part for the purpose of interfering with the rights of employees guaranteed in Section 7 of the Act;

(3) In any other manner interfering with, restraining, or coercing the employees of the Ice Company, or of any other employer, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid and protection, as guaranteed in Section 7 of the Act;

(b) Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(1) Immediately send notices in writing through the United States mails to all members and contributors of the Associated Farmers, including the respondent Ice Company, stating that each of them

will not engage in the conduct from which it is herein recommended that they cease and desist;

(2) Notify the Regional Director for the Twenty-First Region in writing, within ten (10) days from the receipt of this Intermediate Report, what steps they have taken to comply with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid.

It is recommended that the complaint be dismissed insofar as it alleges that the respondents engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

It is further recommended that the complaint be dismissed insofar as it alleges that the Associated Farmers of Imperial County and Hugh T. Osborne engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board—Series 2—as amended, effective October 28, 1942, any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D.C., an original and four copies of a statement

in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

Dated: April 23, 1943.

FRANK A. MOURITSEN
Trial Examiner

United States of America
Before the National Labor Relations Board

Case No. C-2598

In the Matter of

HOLTVILLE ICE AND COLD STORAGE COMPANY, ASSOCIATED FARMERS OF IMPERIAL COUNTY, and HUGH T. OSBORNE

and

TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS UNION 898, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, A. F. of L.

DECISION AND ORDER

On April 23, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action as set out in the copy of the Intermediate Report attached hereto. Thereafter the respondents and the Association filed exceptions to the Intermediate Report and briefs in support thereof. Oral argument before the Board was not requested and none was held. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no

prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. Holtville Ice and Cold Storage Company, Holtville, California, its officers, agents, successors, and assigns, shall;

a. Cease and desist from:

(1) Dominating or interfering with the administration of Holtville Ice and Cold Storage Company employees Association, or with the formation or administration of any other labor organization of its employees, and from contributing support or assistance to said Association, or to any other labor organization of its employees;

(2) Giving effect to its contract of November 1, 1942, with Holtville Ice and Cold Storage Company Employees Association, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract;

(3) Discouraging membership in Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., or any other labor organization of its employees by discharging or refusing to rein-

state any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(4) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act;

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Withdraw all recognition from Holtville Ice and Cold Storage Company Employees Association, as the representative of any of its employees for the purposes of dealing with the respondent Ice Company concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish said Association as such representative;

(2) Offer to Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool, and Herman Fruhn, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges:

(3) Make whole Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool, and Her-

man Fruhn, for any loss of pay they may have suffered by reason of the respondent Ice Company's discrimination against them by payment to each of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings during said period;

(4) Post immediately in conspicuous places in its plant and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent Ice Company will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1a (1) to (4), inclusive, of this Order; (2) that the respondent Ice Company will take the affirmative action set forth in paragraphs 1b (1) to (3), inclusive, of this Order; and (3) that its employees are free to remain or become members of Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and that the Ice Company will not discriminate against any employee because of membership in or activity on behalf of that organization;

(5) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

2. The respondents, Associated Farmers of Imperial County and Hugh T. Osborne, their officers,

agents, successors, and assigns, acting in the interest of the respondent Ice Company, or in the interest of any other employer, shall:

a. Cease and desist from:

(1) Dominating or interfering with the administration of Holtville Ice and Cold Storage Company Employees Association, or with the formation or administration of any other labor organization of the employees of the Ice Company, or any other employer, and from contributing support and assistance to said Association, or to any other labor organization of the employees of the Ice Company, or of any other employer;

(2) Soliciting and collecting funds from the respondent Ice Company, or from any other employer, to be used in whole or in part for the purpose of interfering with the rights of employees guaranteed in Section 7 of the Act;

(3) In any other manner interfering with, restraining, or coercing the employees of the Ice Company, or of any other employer, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid and protection, as guaranteed in Section 7 of the Act;

b. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Immediately send notices in writing through the United States mails to all members and contributors of the Associated Farmers, including the

respondent Ice Company, stating that each of them will not engage in the conduct from which they are ordered to cease and desist in paragraphs 2a (1) to (3), inclusive;

(2) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps they have taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondents engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

And It Is Further Ordered that the complaint, insofar as it alleges that the Associated Farmers of Imperial County and Hugh T. Osborne engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 22 day of July 1943.

[Seal]

HARRY A. MILLIS

Chairman

JOHN M. HOUSTON

Member

National Labor Relations
Board

In the United States Circuit Court of Appeals
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HOLTVILLE ICE AND COLD STORAGE COM-
PANY, ASSOCIATED FARMERS OF IM-
PERIAL COUNTY, and HUGH T. OS-
BORNE,

Respondents.

CERTIFICATE OF THE NATIONAL
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, “In the Matter of Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County, and Hugh T. Osborne and Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A.F.L.,” the same being Case No. C-2598 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of charge filed by Chauffeurs, Teamsters and Helpers, Local 898, A.F.L., filed January 3, 1942.

(2) Copy of first amended charge filed by Chauffeurs, Teamsters and Helpers, Local 898, A.F.L., filed February 2, 1942.

(3) Stenographic transcript of testimony held before Frank A. Mouritsen, Trial Examiner for the National Labor Relations Board on January 25, February 8, 9, 10, 11, 12, 13, 15, 16, and 17, 1943, together with all exhibits introduced in evidence.

(4) Copy of the intermediate Report of Trial Examiner Mouritsen, dated April 23, 1943.

(5) Copy of order transferring the case to the Board, dated April 27, 1943.

(6) Copy of respondents' telegram, dated May 8, 1943, requesting extension of time to file exceptions and briefs.

(7) Copy of telegram, dated May 10, 1943, granting all parties extension of time to file exceptions and briefs.

(8) Copies of respondents' exceptions to the Intermediate Report.

(9) Copy of decision and order issued by the National Labor Relations Board July 22, 1943, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has

hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 25th day of February 1944.

[Seal]

JOHN E. LAWYER

Chief, Order Section

National Labor Relations
Board

C.C.A. #10695

ORDER TO SHOW CAUSE

United States of America, ss:

The President of the United States of America

To Holtville Ice & Cold Storage Co., Holtville, Calif;
Associated Farmers of Imperial County and
Hugh T. Osborne, 207 Rehkopf Bldg., El Centro,
Calif; Chauffeurs, Teamsters and Helpers,
Local 898, A.F.L., 707 S. Hill St., Los Angeles,
Calif., and Holtville Ice & Cold Storage
Company Employees, Association, District Attorney's
Office, El Centro, California

GREETING:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 2nd day of March, 1944 a petition of the National Labor Relations Board for enforcement of its order entered on July 22, 1943 in a proceeding known upon the

records of the said Board as "In the Matter of Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne and Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A.F.L., Case No. C-2598," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 2nd day of March in the year of our Lord one thousand nine hundred and forty-four.

[Seal]

PAUL P. O'BRIEN

Clerk of the United States
Circuit Court of Appeals
for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Petition on the therein-named Holtville Ice

& Cold Storage Co. by handing to and leaving a true and correct copy thereof with H. P. Smith, Secretary, personally at Holtville, in said District on the 4th day of March, 1944.

ROBERT E. CLARK

U.S. Marshal.

By DAVID E. HAYDEN

Deputy.

Marshal's Fees	\$ 8.00
Mileage	\$
Expenses	\$13.44
	<hr/>
Total.....	\$21.44

Expense Acct. #48940

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Petition on the therein-named Associated Farmers of Imperial County and Hugh T. Osborne by handing to and leaving a true and correct copy thereof with Hugh F. Osborne, Secy., personally at El Centro, in said District on the 4th day of March, 1944.

ROBERT E. CLARK

U.S. Marshal

By DAVID E. HAYDEN

Deputy.

Expense Acct. 48940

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Petition on the therein-named Holtville Ice & Cold Storage Co. Employees' Asso. by handing to and leaving a true and correct copy thereof with M. K. Stout, Secretary, personally at Holtville, in said District on the 4th day of March, 1944.

ROBERT E. CLARK

U.S. Marshal

By **DAVID E. HAYDEN**

Deputy.

Expense Acct. #48940

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Decree on the therein-named Chauffeurs, Teamsters and Helpers Local 898 A.F.L. by handing to and leaving a true and correct copy thereof with Iner Mohn, Trustee to Chauffeurs, Teamsters & Helpers Union personally at Los Angeles, in said District on the 8th day of March, 1944.

ROBERT E. CLARK

U.S. Marshal

By **CHARLES L. ELLIS**

Deputy.

[Endorsed]: Filed March 13, 1944. Paul P. O'Brien, Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10695

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HOLTVILLE ICE AND COLD STORAGE COM-
PANY, ASSOCIATED FARMERS OF IM-
PERIAL COUNTY, and HUGH T. OS-
BORNE,

Respondents.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Cir-
cuit:

The National Labor Relations Board, pursuant to
the National Labor Relations Act (Act of July 5,
1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.),
respectfully petitions this Court for the enforce-
ment of its order against respondents, Holtville Ice
and Cold Storage Company, Holtville, California,
its officers, agents, successors, and assigns, and As-
sociated Farmers of Imperial County and Hugh T.
Osborne, their officers, agents, successors, and as-
signs, acting in the interest of the respondent Ice
Company, or in the interest of any other employer.

The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County, and Hugh T. Osborne and Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., Case No. C-2598."

In support of this petition, the Board respectfully shows:

(1) The unfair labor practices which are the subject of the present proceeding occurred in the State of California within this judicial circuit. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on July 22, 1943, duly stated its findings of fact, conclusions of law and issued an order directed to the respondents. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. Holtville Ice and Cold Storage Company,

Holtville, California, its officers, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Dominating or interfering with the administration of Holtville Ice and Cold Storage Company Employees Association, or with the formation or administration of any other labor organization of its employees, and from contributing support or assistance to said Association, or to any other labor organization of its employees;

(2) Giving effect to its contract of November 1, 1942, with Holtville Ice and Cold Storage Company Employees Association, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract;

(3) Discouraging membership in Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(4) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act;

b. Take the following affirmative action which

the Board finds will effectuate the policies of the Act:

(1) Withdraw all recognition from Holtville Ice and Cold Storage Company Employees Association, as the representative of any of its employees for the purposes of dealing with the respondent Ice Company concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish said Association as such representative;

(2) Offer to Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool, and Herman Fruhn, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(3) Make whole Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool, and Herman Fruhn, for any loss of pay they may have suffered by reason of the respondent Ice Company's discrimination against them by payment to each of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings during said period;

(4) Post immediately in conspicuous places in its plant and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent Ice Company will not engage in the conduct from which it is ordered to cease and desist in

paragraphs 1a (1) to (4), inclusive, of this Order; (2) that the respondent Ice Company will take the affirmative action set forth in paragraphs 1b (1) to (3), inclusive, of this Order; and (3) that its employees are free to remain or become members of Truck Drivers, Warehousemen and Helpers Union, 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and that the Ice Company will not discriminate against any employee because of membership in or activity on behalf of that organization;

(5) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

2. The respondents, Associated Farmers of Imperial County and Hugh T. Osborne, their officers, agents, successors, and assigns, acting in the interest of the respondent Ice Company, or in the interest of any other employer, shall:

a. Cease and desist from:

(1) Dominating or interfering with the administration of Holtville Ice and Cold Storage Company Employees Association, or with the formation or administration of any other labor organization of the employees of the Ice Company, or any other employer, and from contributing support and assistance to said Association, or to any other labor organization of the employees of the Ice Company, or of any other employer;

(2) Soliciting and collecting funds from the respondent Ice Company, or from any other employer, to be used in whole or in part for the purpose of interfering with the rights of employees guaranteed in Section 7 of the Act;

(3) In any other manner interfering with, restraining, or coercing the employees of the Ice Company, or of any other employer, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid and protection, as guaranteed in Section 7 of the Act;

b. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Immediately send notices in writing through the United States mails to all members and contributors of the Associated Farmers, including the respondent Ice Company, stating that each of them will not engage in the conduct from which they are ordered to cease and desist in paragraphs 2a (1) to (3), inclusive;

(2) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps they have taken to comply herewith.

(3) On July 22, 1943, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, **bearing Government frank**, by registered mail, to respondents' attorneys.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents, and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and upon so much of the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondents to comply therewith.

NATIONAL LABOR RELATIONS BOARD

By HOWARD LICHTENSTEIN
Assistant General Counsel

Dated at Washington, D. C., this 25th day of February 1944.

District of Columbia—ss.

Howard Lichtenstein, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made

therein are true to the best of his knowledge, information and belief.

HOWARD LICHTENSTEIN

Assistant General Counsel

Subscribed and sworn to before me this 25th day of February 1944.

[Seal]

JOHN E. LAWYER

Notary Public, District of Columbia. My Commission Expires August 31, 1944.

[Endorsed]: Filed March 2, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

On Petition for Enforcement of An Order of the
National Labor Relations Board

STATEMENT OF POINTS RELIED UPON
BY THE BOARD

Pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the above entitled proceeding:

I.

The National Labor Relations Act is applicable to the operations of respondent Holtville Ice and Cold Storage Company.

II.

The Board's findings of fact are supported by substantial evidence. Upon the facts so found all

respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act and respondent Holtville Ice and Cold Storage Company has also engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

III.

The Board's order is valid.

Dated at Washington, D. C., this 25th day of February 1944.

HOWARD LICHTENSTEIN

Assistant General Counsel

National Labor Relations

Board.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF RESPONDENTS ASSOCIATED
FARMERS OF IMPERIAL COUNTY AND
HUGH T. OSBORNE TO PETITION FOR
ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Associated Farmers of Imperial County and
Hugh T. Osborne, respondents in the above entitled matter, in accordance with Section 10 (E) of the National Labor Relations Act (49 Stat. 453, Chap. 372, 29 U.S.C. Section 160 (E)), approved

July 5, 1935) answers the petition presented to this Honorable Court for the enforcement of a certain order of the National Labor Relations Board, hereinafter referred to as the "Board."

In answer to said petition these respondents admit, deny, and allege as follows:

I.

Admits the allegations contained in Paragraph (1) of said petition except that respondents deny that it or he committed any unfair labor practices as alleged in said paragraph.

II.

Admit the allegations in Paragraph (2) of said petition, that on July 22, 1943, the Board entered the order quoted in said paragraph, but deny, for lack of information or belief, all the other allegations in said paragraph.

III.

Admit the allegations contained in Paragraph (3) of said petition.

IV.

Deny, for lack of information or belief, the allegations contained in Paragraph (4) of said petition.

In Further Answer to Said Petition, Respondents Respectfully Allege:

That the findings of the Board as to the facts are not supported by the evidence, and more particularly allege that the evidence does not support the following findings of the Board in said matter:

(1) The finding that respondent Osborne discussed the formation of an unaffiliated organization with Willard, and that Willard asked Osborne to "interest" himself in the situation and Osborne promised to make an investigation.

(2) The finding that within a few days after his talk with Willard, Osborne questioned a number of the employees, including Tom Herring, George Harlan, Herman T. Pool, and L. H. Davis, about their reasons for joining the Union, and suggested to some of them that they form an unaffiliated organization.

(3) The finding that respondent Osborne suggested the formation of an unaffiliated Union to Harlan, named a plant where such an organization had been formed, and agreed to give Harlan a copy of its constitution and bylaws, and that Harlan gave to respondent Osborne the names of employees he thought would be interested in the formation of such an association. He gave him, however, the names of employees who had made application to join the Union.

(4) The finding that the inference is warranted in view of Metz' statement to Miller, that he talked with Miller at the behest of respondent Osborne, and the finding that Osborne admitted that he reported back to Willard after questioning the employees.

(5) The finding that Willard assisted the Association in the negotiation of the contract, which provided for exclusive recognition of the Asso-

ciation as a collective bargaining agent and contained a provision suggested by Whitelaw that after a fifteen day period all new employees hired by the Ice Company should become members of the Association in order to continue to work at the plant.

The finding that Willard readily agreed to bargain with the committee and accepted without question their unsupported claim to represent the employees, despite the prior conflicting claim of the Union that it represented the employees.

(6) The finding that it is clear that respondent Osborne initially suggested the formation of the Association, and the finding that Osborne was clearly acting at the request and in the interest of the Ice Company, and resultantly is an employer within the meaning of the Act.

(7) The finding that the acts of Metz in talking to Miller were undertaken at the request of respondent Osborne, and that the Associated Farmers are responsible for the acts of Osborne and Metz, and that the respondent Osborne, representing the Associated Farmers acted with reference to the Association at the request of Willard.

The finding that the Associated Farmers and the Ice Company are responsible for the acts of Metz and respondent Osborne in assisting in the formation of the Association.

The finding that by the acts of assistance to the Association all respondents have dominated and interfered with the formation of the Asso-

ciation, and have interfered with, restrained, and coerced the Ice Company's employees in the exercise of the rights guaranteed in Section 7 of the Act, and that the Ice Company, the Associated Farmers, and respondent Osborne should cease their acts of interference with the rights of the employees guaranteed by the Act.

(8) The findings on which the above findings were purportedly based.

(9) And any and all findings that respondent Associated Farmers and respondent Osborne, or either of them, interfered with, or restrained, or coerced the Association in its formation and activities.

In further answer to said petition, respondents respectfully allege: That the Board acted without and in excess of its powers in making and entering its conclusions of law and order in this matter by reason of the lack of evidence of the matters heretofore more particularly set forth.

In further answer to said petition, respondents respectfully allege: That objection was urged before the Board as to lack of evidence to support findings of the nature heretofore complained of as being without evidence to support them.

In further answer to said petition, respondents respectfully allege: That the Board in making its order that respondents Associated Farmers and Osborne, their officers, agents, successors, and assigns acting in the interest of any other employer shall

cease and desist from dominating or interfering with the formation or administration of any other labor organization of any other employer and from contributing support and assistance to any other labor organization of any other employer; and

Is without the jurisdiction of this Board and in violation of the guarantee of freedom of speech in (Article I) of Article VII of the Constitution of the United States.

Wherefore, respondents pray this Honorable Court that it deny the petition of the National Labor Relations Board for the enforcement of its order, that it set aside said order in its entirety, or if such prayer be denied, that it set aside the said order of the Board in such part as the same is not supported by evidence as is in this answer heretofore set forth with particularity, and insofar as set aside, that the Court relieve these respondents, and the officers, agents and representatives of respondent Associated Farmers of any necessity to comply therewith.

Dated: March 11, 1944.

WHITELAW & WHITELAW

By R. B. WHITELAW

Attorneys for Respondents,
Associated Farmers of Imperial County and Hugh T. Osborne, as an individual
207-210 Rehkopf Building
111 North 6th Street
El Centro, California
Phone 67

State of California

County of Imperial—ss.

Hugh T. Osborne, being first duly sworn, says:

That he is the Secretary and Manager of respondent, Associated Farmers of Imperial County, a corporation; that he is authorized to and does make this verification on behalf of said respondent, and on behalf of himself as an individual; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

HUGH T. OSBORNE

Subscribed and sworn to before me this 11th day of March, 1944.

[Seal] R. B. WHITELAW

Notary public in and for said County and State.

[Endorsed]: Filed March 13, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF RESPONDENT HOLTVILLE
ICE AND COLD STORAGE COMPANY TO
PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Holtville Ice and Cold Storage Company, re-
spondent in the above entitled matter, in accordance

with Section 10 (E) of the National Labor Relations Act (49 Stat. 453, Chap. 372, 29 U.S.C. Section 160 (E), approved July 5, 1935) answers the petition presented to this Honorable Court for the enforcement of a certain order of the National Labor Relations Board, hereinafter referred to as the "Board."

In answer to said petition, this respondent admits, denies and alleges as follows:

I.

Admits the allegations contained in Paragraph (1) of said petition except that respondent denies that it committed any unfair labor practices as alleged in said paragraph.

II.

Admits the allegations in Paragraph (2) of said petition, that on July 22, 1943, the Board entered the order quoted in said paragraph, but denies, for lack of information or belief, all the other allegations in said paragraph.

III.

Admits the allegations contained in Paragraph (3) of said petition.

IV.

Denies, for lack of information or belief, the allegations contained in Paragraph (4) of said petition.

In further answer to said petition, respondent respectfully alleges:

That the findings of the Board as to the facts are not supported by the evidence, and more particu-

larly alleges that the evidence does not support the following findings of the Board in said matter:

(1) The finding that respondent's employees, Pete Pool and Herman Smith, questioned employees and attempted to discourage affiliation with the union, and that their alleged activities constituted interference, restraint and coercion within the prescription of the act.

(2) The finding that the Ice Company is responsible for the acts of Metz and Osborne in assisting in the formation of the Association and that by their acts of assistance to the Association respondent has dominated and interfered with the formation of the Association and has interfered with, restrained and coerced the Ice Company's employees in the exercise of the rights guaranteed by Section 7 of the Act.

The finding that the Association is incapable of serving the employees as a true bargaining agent and that it should be disestablished.

(3) The finding that the Ice Company discriminated against the employees, Herman T. Pool, L. H. Davis, Herman Frohn, Lester C. Hart, Arthur Standifer, Perry T. Blankenship and Henry C. Fredenburg, because of their union activities, and the finding as to each man above named that the evidence establishes the discriminatory refusal to reinstate each because each applied for membership in the union.

(4) The finding that the activities of respondent have a close, intimate and substantial relation to trade, traffic and commerce among the several states

and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

(5) The findings on which the above findings were purportedly based.

(6) Any and all findings that respondent committed any unfair labor practice or violated the National Labor Relations Act in any respect.

In further answer to said petition, respondent respectfully alleges: That the Board acted without and in excess of its powers in making and entering its conclusions of law and order in this matter by reason of the lack of evidence of the matters heretofore more particularly set forth.

In further answer to said petition, respondent respectfully alleges: That objection was urged before the Board as to lack of evidence to support findings of the nature heretofore complained of as being without evidence to support them.

In further answer to said petition, respondent respectfully alleges: That the employees of respondent did, before any of them met Hugh Osborne or Keith Metz, discuss and consider the formation of an Employee's Association, and that said employees requested Mr. Osborne to loan them the By-Laws, including forms, etc., of an independent union from which they could pattern their own Employee's Association, long before the Ice Company or its agents had any knowledge of any union activities and that the employees did form their own Association, without assistance of any kind from the Ice Company, did bargain with the Ice Com-

pany, secured many benefits for themselves, and were and are all satisfied and want their Association to continue to act as their bargaining agent; that the Board, by its order, has refused to permit the employees to use their Association or to have it as their bargaining representative even though one hundred per cent of the employees are in favor of it and want it.

Wherefore, respondent prays this Honorable Court that it deny the petition of the National Labor Relations Board for the enforcement of its order, that it set aside said order in its entirety, or if such prayer is denied, that it set aside the said order of the Board in such part as the same is not supported by evidence as is in this manner heretofore set forth with particularity, and insofar as set aside, that the Court relieve respondent, its officers, agents and representatives, of any necessity to comply therewith.

Dated March 9, 1944.

CLARENCE B. SMITH

Attorney for Repondent,
Holtville Ice and Cold Storage
Company.

212 Rehkopf Building
111 North 6th Street
El Centro, California.

State of California

County of Imperial—ss.

F. A. Willard, being first duly sworn, says:

That he is the President and Manager of respond-

ent, Holtville Ice and Cold Storage Company, a corporation; that he is authorized to and does make this verification on behalf of said respondent; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

F. A. WILLARD

Subscribed and sworn to before me this 9 day of March, 1944.

[Seal] C. B. SMITH

Notary Public in and for said County and State.

[Endorsed]: Filed March 13, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

On Petition for Enforcement of an Order of the
National Labor Relations Board

STATEMENT OF POINTS RELIED UPON BY
THE HOLTVILLE ICE AND COLD STORAGE COMPANY

Pursuant to Section 6 of Rule 19 of the Court, the Ice Company submits the following statement of points upon which it intends to rely in the above entitled proceeding:

I.

The National Labor Relations Act is not applicable to the operations of the respondent Holtville Ice and Cold Storage Company.

II.

The Board's findings of fact are not supported by substantial evidence. There is no substantial evidence to prove that this respondent has engaged in and is engaged in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act, and there is no substantial evidence to indicate that this respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

III.

The Employee's Association was never assisted or dominated in any way by the Ice Company and is the bargaining representative for all of the employees.

IV.

The Ice Company did not discriminate against any employee because of his union activities.

V.

The Board's order should be reversed.

Dated at El Centro, California, this 9th day of March, 1944.

CLARENCE B. SMITH

Attorney for Holtville Ice and
Cold Storage Company.

[Endorsed]: Filed March 13, 1944. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

On Petition for Enforcement of an Order of the
National Labor Relations Board

STATEMENT OF POINTS RELIED UPON BY
THE ASSOCIATED FARMERS OF IM-
PERIAL COUNTY, AND HUGH T. OS-
BORNE

Pursuant to Section 6 of Rule 19 of the Court, the Associated Farmers and Hugh T. Osborne submit the following statement of points upon which it and he intend to rely in the above entitled proceeding:

I.

The National Labor Relations Act is not applicable to the operations of the respondents Associated Farmers of Imperial County, and Hugh T. Osborne.

II.

The Board's findings of fact are not supported by substantial evidence. There is no substantial evidence to prove that these respondents have engaged in and are engaged in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act.

III.

The Employee's Association was never assisted or dominated in any way by these respondents and is the bargaining representative for all of the employees.

IV.

That these respondents do not come within the

meaning of Section 2, Subdivisions (2) and (3) of the National Labor Relations Act;

V.

That the Board has, by its order of cease and desist to the respondents, abridged the freedom of speech and contravenes (Article I) of Article VII of the Constitution of the United States.

VI.

That these respondents have not intefered, restrained or coerced the employees of the respondent Iet Company in the formation of the Association.

VII.

The Board's order should be reversed.

Dated at El Centro, California, this 11th day of March, 1944.

WHITELAW & WHITELAW

By R. B. WHITELAW

Attorneys for Associated
Farmers of Imperial
County, and Hugh T.
Osborne

[Endorsed]: Filed March 13, 1944. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-C-1985

In the Matter of:

HOLTVILLE ICE AND COLD STORAGE COM-
PANY; ASSOCIATED FARMERS OF IM-
PERIAL COUNTY; and HUGH T. OS-
BORNE

and

CHAUFFEURS, TEAMSTERS AND HELPERS,
LOCAL 898, A. F. L.

TESTIMONY

Room A, Barbara Worth Hotel

El Centro, California

Monday, January 25, 1943.

The above-entitled matter came on for hearing,
pursuant to notice, at 10:30 o'clock a. m.

Before:

Frank A. Mouritsen,

Trial Examiner.

Appearances:

Charles M. Ryan and

Robert C. Moore,

Attorneys for the National Labor
Relations Board.

Clarence B. Smith,

212 Rehkopf Building, El Centro,
California, appearing on behalf of
Respondents Holtville Ice and Cold
Storage Company; and F. A. Willard.

R. B. Whitelaw,

207-10 Rehkopf Building, El Centro,
California, appearing for Respondents
Associated Farmers of Imperial County,
and Hugh T. Osborne. [1*]

Ed Achstetter, and

A. H. Petersen,

795 Main Street, El Centro, California
815 South Hill Street, Los Angeles,
California, appearing on behalf of Truck
Drivers, Warehousemen and Helpers.
Local 898, A. F. L. [2]

Mr. Ryan: If the Trial Examiner please, I now offer to be marked for identification the formal papers upon which this proceeding rests. [9]

Mr. Ryan: I now show the documents that I have had marked for identification from 1-A through 1-S, to counsel for their examination; and I offer those documents in evidence as Board's Exhibits 1-A to 1-S, inclusive.

Mr. Whitelaw: Those documents are merely those which you have recited, are they not?

Mr. Ryan: Yes.

Mr. Smith: I would like to see that first or second one which you spoke of.

* Page numbering appearing at top of page of original Reporter's Transcript.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

There being no objection to the offer, the documents will be received in evidence and marked.

(Thereupon the documents referred to were received in evidence and marked as Board's Exhibits Nos. 1-A to 1-S, inclusive, respectively.)

[Printer's Note: Board's Exhibits Nos. 1-A to 1-S are set out at pages 1 to 38 of this printed record.] [15]

Mr. Ryan: Mr. Examiner, during the recess I served the Holtville Ice and Cold Storage Company Employees Association with a copy of the complaint, amendment to the complaint, notice of hearing, and a notice of continuance of hearing in this matter, and I now offer in evidence as part of the formal exhibit the acknowledgment of service signed by M. K. Stout, the secretary-treasurer of the Employees Association. I would like to have that marked next in order.

Trial Examiner Mouritsen: Board's Exhibit 1-T.

(The document referred to was marked as Board's Exhibit No. 1-T, for identification.)

Trial Examiner Mouritsen: Do you want to see this?

Mr. Smith: No.

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Whitelaw: No objection.

Mr. Smith: No objection.

Trial Examiner Mouritsen: It is received in evidence as Board's Exhibit 1-T. [21]

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 1-T, was received in evidence.)

[Printer's Note: Board's Exhibit No. 1-T is set out at page 38 of this printed record.]
[22]

Evening Session

(Whereupon the hearing was resumed at 5:25 o'clock, p. m.)

Present:

Mr. Ryan.

Mr. Moore,

Mr. Smith,

Mr. Whitelaw,

Mr. Achstetter, and

Russell Yeager,

District Attorney's Office,

appearing on behalf of Holtville

Ice and Cold Storage Company

Employees Association, El Centro.

California

Trial Examiner Mouritsen: By agreement of all parties we are meeting today at this time instead of at the time set at the time when we took the adjournment.

Mr. Yeager: Russell Yeager is appearing as at-

torney for the Holtville Ice and Cold Storage Company Employees Association; and I am informed that these parties have been served on the 25th day of January, 1943, and I was this day employed as counsel; and for those reasons I am asking that the case be continued at least ten days for the purpose of permitting me to prepare my case.

Trial Examiner Mouritsen: Very well. In view of the fact that the complaint was not served upon the Association until today, I am going to take an adjournment at this place until February 8, 1943, at 10:00 a. m. in the forenoon.

Do any of the other parties have anything to add?

Mr. Ryan: I haven't.

Mr. Achstetter: No, sir.

Mr. Smith: Nothing. [25]

Trial Examiner Mouritsen: Very well. The record will show that the representatives of all parties are present.

(Whereupon, at 5:30 o'clock p. m., January 25, 1943, an adjournment was taken until 10:00 o'clock a. m., February 8, 1943, at El Centro, California.) [26]

Mr. Ryan: Mr. Examiner, during the adjournment I served a Motion to Amend Complaint on the various respondents and the Employees Association involved in this matter, and now I wish to make the Motion to Amend the Complaint a part of the formal exhibit, as number next in order, and Acknowledgment of Service signed by representatives of each of the respondents and the Employees

Association and the Chauffeurs, Teamsters and Helpers, Local 898, also; make that a part of the formal exhibit.

(The documents referred to were marked as Board's Exhibits Nos. 1-U and 1-V, for identification.)

Mr. Yeager: Could I have leave to serve copies of my Answer on behalf of the Employees Association at this time?

Trial Examiner Mouritsen: Why don't you give them to Mr. Ryan and let him offer them as part of the Board's formal exhibit, too?

Mr. Whitelaw: With respect to the Motion to Amend Complaint, on behalf of the Associated Farmers and Hugh T. Osborne, we have no objection the amendment being made at this time, provided, however, that it may be deemed that on behalf of Associated Farmers and Osborne they admit the first portion of Paragraph 7-A and deny the remainder of 7-A.

Trial Examiner Mouritsen: If I understand you correctly, [30] you admit that the contract was executed on or about November 1, 1941, or some contract, and that contract or some extension thereof is still in effect?

Mr. Whitelaw: That is correct.

Trial Examiner Mouritsen: You deny it is an illegal contract and should be cancelled?

Mr. Whitelaw: That is correct.

Mr. Smith: On behalf of the Holtville Ice and Cold Storage Company the situation is the same as stated by Mr. Whitelaw. The Holtville Ice and

Cold Storage Company admits since on or about November 1, 1941, it has had a written contract with the Holtville Ice and Cold Storage Employees Association and alleges that that contract was renewed the following year, and that the Ice Company denies that the contract is illegal and should be cancelled, and all the balance of the allegations contained in Paragraph No. 7-A, except those expressly admitted.

Trial Examiner Mouritsen: I see.

Mr. Yeager, you have received a copy of the Motion to Amend the Complaint?

Mr. Yeager: Yes, sir, that is included in my Answer.

Mr. Smith: I believe I would like leave to file a written answer to that, to make the record complete.

Trial Examiner Mouritsen: You may do so. Take care of it as soon as possible. [31]

Mr. Smith: Yes, sir.

Trial Examiner Mouritsen: Is there any objection, first, to the offer of Board's Exhibits 1-U and 1-V? Have you seen them, gentlemen? You know what they are.

Mr. Whitelaw: 1-U is the amended complaint—

Trial Examiner Mouritsen: I think it is the reverse.

Mr. Whitelaw: 1-V is the Notice to Amend the Complaint and 1-U is the Acknowledgment of Service.

We have no objection except as to the—provid-

ing it is agreeable with Mr. Ryan and the union that A. F. of L. and the local are—may be filed with the provisions as stated.

Mr. Ryan: That is satisfactory.

Mr. Smith: I believe I am going to object to the allowing of the motion.

Trial Examiner Mouritsen: I am merely asking about the offer in evidence now, and then I will ask you about the motion itself.

Mr. Smith: Oh.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: No objection to the offer. The offer doesn't carry any implication that the motion is granted.

Mr. Smith: I see.

Trial Examiner Mouritsen: They will be received in [32] evidence as marked.

(Thereupon the documents referred to, heretofore marked for identification as Board's Exhibits Nos. 1-U and 1-V, were received in evidence.)

[Printer's Note: Board's Exhibits Nos. 1-U and 1-V are set out at page 39 and page 40 of this printed record.]

Trial Examiner Mouritsen: Is there any objection to the motion to amend?

Mr. Smith: Yes. On behalf of the Holtville Ice and Cold Storage Company I am going to object to the motion to amend for this reason: The complaint is a verified complaint, is it not?

Mr. Ryan: Signed complaint.

Mr. Smith: Signed by the Chauffeurs, Teamsters and Helpers, and sworn——

Mr. Ryan (Interrupting): I think you are confusing the complaint with the charge. I see you are looking at the charge.

Mr. Smith: At any rate,——

Mr. Petersen: The complaint is signed by the Regional Director.

Mr. Smith: This amendment is signed only by the attorney. That may be your practice in the National Labor Relations Board, but in the courts the amendment would have to be sworn to the same as the complaint.

Mr. Ryan: The complaint isn't sworn to.

Mr. Petersen: The complaint isn't sworn to. The charge is sworn to but not the complaint. [33]

Mr. Smith: The complaint is signed by E. J. Eagen, Director of National Labor Relations Board. This amendment is signed by Mr. Charles M. Ryan, attorney.

Mr. Ryan: That is a motion to amend.

Trial Examiner Mouritsen: I think under our rules and regulations the complaint may be amended at any time.

Mr. Smith: Without the signature of the original signer?

Trial Examiner Mouritsen: Yes, it may be amended by the Board itself.

Mr. Smith: All right.

Trial Examiner Mouritsen: Any other objection to the granting of the motion? I will grant the motion, and in that I assume, from the acknowl-

edgment of the receipt of service, that all parties have had a copy of that motion.

Mr. Smith: I received a copy.

Trial Examiner Mouritsen: For more than ten days?

Mr. Smith: Yes, that is correct.

Trial Examiner Mouritsen: How about the Association's Answer, Mr. Ryan?

Mr. Ryan: The Holtville Ice and Cold Storage Company Employees Association has filed an Answer with me, which I now offer in evidence as part of the formal record; it will be 1-W.

(The document referred to was marked as Board's Exhibit No. 1-W, for identification.)

[34]

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Petersen: No objection.

Mr. Whitelaw: No objection.

Trial Examiner Mouritsen: Mr. Smith.

Mr. Petersen: May I say we are not objecting to offering all these things in evidence, always reserving the right of examination on them through the parties by calling the parties to the stand that have made the affidavit.

Trial Examiner Mouritsen: I understand that you are not making any waiver of that nature by your failure to object.

Mr. Smith: No objection.

Trial Examiner Mouritsen: It is received in evidence as Board's Exhibit 1-W.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 1-W, was received in evidence.)

[Printer's Note: Board's Exhibit No. 1-W is set out at page 41 of this printed record.]

Mr. Ryan: Mr. Examiner, counsel for Holtville Ice and Cold Storage Company and myself, attorney for the Board, have discussed a proposed stipulation with respect to the operations of the Holtville Ice and Cold Storage Company, and I will now make the stipulation on the record.

Mr. Whitelaw: The stipulations entered into, we wish to object to the taking of any evidence, or by stipulation, on [35] the record, on the ground the Board is without jurisdiction, it does not come within the provinces of the Interstate Commerce Act. We would like to have the *record*, if we may, our objection goes to the entire proceedings herein.

Trial Examiner Mouritsen: It will so show, and the objection will be overruled.

Mr. Smith: I suppose that is one of the issues in the case, is it not?

Trial Examiner Mouritsen: Certainly.

Mr. Smith: It is raised by our answer, and the objection is not necessary to raise——

Trial Examiner Mouritsen: On behalf of your client it is not. I mean it is one of the issues to be here determined; in order to determine that issue we have to look at the facts, so that the overruling of the objection means merely we are going forward.

Mr. Smith: Surely.

Mr. Ryan: It is stipulated by and between counsel for Respondent Holtville Ice and Cold Storage Company and counsel for the Board that Holtville Ice and Cold Storage Company is a California corporation, organized and existing under and by virtue of the laws of the State of California; that it was incorporated in February, 1926; that it has no parent company, subsidiary or branches; that the company has its office and place of business located in the [36] City of Holtville, State of California, where it is engaged in the business of manufacturing, selling and distributing ice; that the officers of the company are: F. A. Willard, President, Dave Vencill, Vice-president, and Herman Smith, Secretary and Treasurer; that the purchases of the company during the year 1941 amounted to approximately \$2400.00 per month of electric power, and that approximately \$400.00 per month represents the purchases of water during 1941; that the sales of ice during the year 1941 by Respondent Holtville Ice and Cold Storage Company amount to a total of \$111,387.42;—

Mr. Smith: Everything up until then I stipulate to. I am not sure about that figure. Mr. Willard can clarify that.

Mr. Ryan: May we go off the record?

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Mr. Ryan: Miss Reporter, will you mark this document as Board's Exhibits 2-A and 2-B?

(The documents referred to were marked as Board's Exhibits Nos. 2-A and 2-B, for identification.)

Mr. Ryan: I have had marked for identification a two page document entitled "Customers for Year 1941, Holtville Ice and Cold Storage Company." I have previously shown copies to counsel for the various respondents. [37]

Mr. Yeager: I haven't seen that.

Mr. Ryan: The document purports to set forth the list of customers for the year 1941 for Holtville Ice and Cold Storage Company, with the amount of ice sold to each customer during that period.

I offer it in evidence as Board's Exhibits 2-A and 2-B.

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Smith: No objection.

Mr. Yeager: No objection.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: It is received as marked.

(Thereupon the documents referred to, heretofore marked for identification as Board's Exhibits Nos. 2-A and 2-B, were received in evidence.)

BOARD'S EXHIBIT No. 2-A

(Copy)

STATEMENT

HOLTVILLE ICE & COLD STORAGE CO.

Telephone 31

Holtville, California, Sept. 29, 1942

Customers for Year 1941

Date	Balance
George Averill	\$12089.89
Dorman Farms Co.	20384.32
Holtville Pkg. Co.	2726.69
Joe Maggio	13043.60
K. K. Sharp	46950.17
Thor Pkg. Co.	15266.20
V. H. Azderian	15.00
Cravath & Sawyer	3.55
C. P. Denny	18.40
Engebretson Grupe Co.	36.25
W. J. Gregg	2.55
Hunt Bros. Co.	39.70
H. U. High School	129.85
Holtville Groceteria	21.00
Threlfield Commissary	11.40
U. S. Bureau of Reclamation.....	2.00
B. W. Country Club	24.80
City of Holtville	12.00
Cudahy Pkg. Co.	270.60
George F. Johnston	44.60
Reid Manchester	10.10
Migratory Camp	3.60
Keith Metz	106.35
Ralph Myers	32.40
Joe Palmisano	13.65
S. P. Railway Co.	52.05
Snyder & Gregg	24.00
Thor Pkg. Co.	39.55
Mace Williams	10.25

BOARD'S EXHIBIT No. 2-B

(Copy)

STATEMENT

HOLTVILLE ICE & COLD STORAGE CO.

Telephone 31

Holtville, California....., 194.....

Customers for year 1941

Number of customers served by each driver

Date	Charges	Credits	Balance
G. P. Drinard		40	
Tom Herring		1.00	
W. C. Hefner		1.50	

Trial Examiner Mouritsen: Mr. Ryan, do the figures on this exhibit reach the total of \$111,-387.42 that you read?

Mr. Ryan: Yes, they do, unless my calculation is incorrect; and I don't think it is.

Miss Reporter, will you mark this document as Board's Exhibits 3-A and 3-B?

(The documents referred to were marked as Board's Exhibits Nos. 3-A and 3-B, for identification.)

Mr. Ryan: Mr. Examiner, I have had a document marked for identification as Board's Exhibits 3-A and 3-B, being [38] entitled "Customers for Year 1942, Holtville Ice and Cold Storage Company," and it purports to list the customers to whom the Holtville Ice and Cold Storage Company sold ice during the year 1942, and also sets forth the amount of ice sold to each customer in dollar

volume. I have previously shown counsel of the various respondents this document.

I will now offer it in evidence.

Trial Examiner Mouritsen: Any objection to the offer of Board's 3-A and 3-B?

Mr. Petersen. No objection.

Trial Examiner Mouritsen: It is received in evidence as marked.

(Thereupon the documents referred to, heretofore marked for identification as Board's Exhibits Nos. 3-A and 3-B, were received in evidence.)

BOARD'S EXHIBIT No. 3-A

(Copy)

STATEMENT

HOLTVILLE ICE & COLD STORAGE CO.

Telephone 31

Holtville, California, Sept. 29, 1942

Customers for year 1942

Date	Charges	Credits	Balance
George Averill		\$13617.00	
Dorman Farms		24181.27	
H. P. Fites		10233.60	
Joe Maggio		17493.95	
Al Massera		4939.25	
Ritz Dist. Co.		223.50	
K. K. Sharp		47905.12	
Thor Pkg. Co.		19971.88	
L. O. Wilabee		15.42	
V. H. Azhderian		63.15	
R. W. Country Club		113.30	
City of Holtville		3.00	
Company Fund Co. A29th Engr...		2.70	
Cudahy Packing Co.		215.40	

Date	Charges	Credits	Balance
	Div. of Highways	18.90	
	Engebretson Grupe Co.	19.45	
	H. Grammar School50	
	W. J. Gregg	17.85	
	H. U. High School	44.30	
	Imperial Irrig. Dist.	30.00	
	George F. Johnston	57.60	
	R. C. Manchester	3.25	
	R. E. Meyers Co.	44.90	
	Fred Maurer	19.20	
	Keith Metz	41.25	
	S. P. Railway Co.	37.50	
	K. K. Sharp	24.90	

BOARD'S EXHIBIT No. 3-B

(Copy)

STATEMENT

HOLTVILLE ICE & COLD STORAGE CO.

Telephone 31

Holtville, California....., 194.....

Customers for year 1942

Number of customers served by each driver

Date	Charges	Credits	Balance
	G. P. Drinkard56	
	Tom Herring	1.10	
	W. C. Hefner	1.19	

Mr. Ryan: During the year 1941, among the customers who purchased ice from the Holtville Ice and Cold Storage Company, were six vegetable packing companies, doing business in Holtville, California, and the total amount of ice shipped to

those—sold to those packing companies during the year 1941 amounted to \$110,460.87.

Mr. Smith: They are included——

Mr. Ryan: They are included in Board's 2-A and 2-B.

Trial Examiner Mouritsen: 3-A and 3-B.

Mr. Ryan: Yes, 3-A and 3-B. There is a slight change. [39]

Trial Examiner Mouritsen: You gave it for the year 1941?

Mr. Ryan: Yes. The names of the companies are the first six customers named in the document, on Board's Exhibit 2-A. They are the companies listed in Board's Exhibit 3-A, the first customers listed, with the exception of the last, which follow the name of Ritz Distributing Company, which is not included in that group; otherwise they would represent the first seven customers appearing on Board's Exhibit 3-A.

The total amount of ice sold during 1942 to those customers was—eight vegetable packing companies—amounts to \$138,342.07.

The total sales of ice for 1942 to all the customers who are listed on Board's Exhibits 3-A and 3-B amounts to \$139,339.99.

Those vegetable packing companies listed as customers in Board's Exhibit 3-A are also all engaged in the vegetable packing business in Holtville, California.

It is further stipulated that the ice which was purchased by the vegetable packing companies listed in Board's Exhibits 2-A and 3-A was used in the

packing of vegetables and the icing of railroad cars in which those vegetables were shipped, during the years 1941 and 1942.

Mr. Smith: I think it would be probably more correct to say a substantial part of that ice was used that way. [40]

Mr. Smith: I might state for the record Mr. Ryan requested that we obtain from the various shippers of produce the number of cars that went out of the state.

Trial Examiner Mouritsen: Are these the same?

Mr. Smith: Same shippers.

Trial Examiner Mouritsen: Same shippers.

Mr. Smith: 2-A and 3-A.

Mr. Ryan: Referred to as vegetable packing companies.

Mr. Smith: I explained to him the big majority of these cars are sold f.o.b. by the packer in Holtville, but he wanted the ultimate destination of the cars and in many instances I did not know exactly but I assumed the greater percentage went out of the state.

Mr. Ryan: In some instances you say that is true and in others——

Mr. Smith: For instance, some of the shippers specified that the big majority of their cars were sold f.o.b. in Holtville to some buyer and then learned then that ultimately those cars did leave the state. I am willing to stipulate that more than fifty per cent of the cars packed with this ice furnished by the Holtville Ice and Cold Storage Com-

pany did ultimately leave the state. Is that sufficient?

Mr. Ryan: Yes. Now the only thing we have left is as to the approximate number of cars. It was further [42] agreed between counsel for the various respondents, I believe,—correct me if I am wrong—and myself, attorney for the Board, in lieu of calling the representatives of these various packing companies we would agree that a letter from those individuals would be acceptable in evidence, in lieu of testimony.

Trial Examiner Mouritsen: The stipulation, also to the effect that the subject matter contained in the letters, is accepted as true statements of the matters that they contain?

Mr. Smith: Wouldn't it be sufficient for all purposes to stipulate that over fifty per cent of the cars packed with ice from the Ice Company did ultimately leave the state, a total of some 2,812 cars.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Mr. Ryan: That was for 1942?

Mr. Smith: Packed 1942 shipments.

Mr. Ryan: Vegetable packing customers. I will stipulate that as approximately the total number of cars; vegetables that were packed by them. Now as to the percentage of that number that went out of the state, shipped out of the State of California. What percentage can we agree on?

Mr. Smith: More than fifty per cent were ultimately [43] shipped out of the state by the purchasers of the packed cars.

Mr. Ryan: Would you go as far as saying seventy-five per cent?

Mr. Smith: I think.

Mr. Ryan: It is further stipulated that at least seventy-five per cent of those cars were shipped out of the State of California by the purchasers.

Mr. Smith: Not by the packer.

Mr. Ryan: Not by the packer. I understand they were sold f.o.b. at the packing plant,——

Mr. Smith: The big majority were.

Mr. Ryan: ——out of the State of California.

Trial Examiner Mouritsen: Very well. Is that all the stipulation?

Mr. Ryan: I think that completes it. [44]

Mr. Ryan: It is further stipulated that the total number of cars of vegetables packed by the vegetable companies who are customers of Holtville Ice and Cold Storage Company were about the same in 1941 as they were in 1942, and that the proportion which went into interstate commerce and left the State of California were about the same proportion, approximately seventy-five per cent.

Trial Examiner Mouritsen: Do you propose to cover in your stipulation the power and water used in 1942?

Mr. Ryan: I would rather get that from Mr. Willard in his testimony.

Trial Examiner Mouritsen: Very well. Gentlemen, do you have the stipulation in mind?

Mr. Smith: Yes. I stipulate to the matter stated by Mr. Ryan.

Mr. Ryan: I would like to now call Mr. Willard to the witness stand, please.

F. A. WILLARD

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [45]

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please?

A. F. A. Willard.

Q. And what is your address?

A. Holtville, California.

Q. What is your occupation, Mr. Willard?

A. I am president of the Holtville Ice and Cold Storage Company.

Q. How long have you held that position?

A. Since the organization started.

Q. What, in general, are your duties as president? That is, with regard to the operation of the company's business?

A. I have the active management of the company.

Q. Are you on the job more or less all the time—

A. Yes.

Q.—at the plant?

A. Yes.

(Testimony of F. A. Willard.)

Q. Are you in close contact with the actual operations of the business and the work of the employees on the job? A. Yes.

Q. Give us a brief description of the plant facilities indicating the size of the plant and the—a description of how the plant operates.

A. As of what date?

Q. Well, beginning in 1941. [46]

A. Well, in—for the vegetable season in 1941 the plant was—plant power was made by Diesel engines, and the capacity of the plant was approximately 150 tons of ice a day.

Q. Before we get into that, will you tell us, first, approximately how much ground is involved in this plant site where you have your plant in Holtville?

Mr. Whitelaw: Just a minute. Why these questions, Mr. Ryan?

Mr. Ryan: I think they will be helpful in giving the Board or whoever has to read the record a clear picture of the nature of the plant involved in this particular matter, and as far as the bargaining unit would be concerned it would also be helpful for anyone to know how big the plant is, whether the employees work in a closely knit plant or whether they are scattered all over the countryside; I think it would be helpful for that reason.

Mr. Whitelaw: I have no objection then, if that is the purpose.

A. The ground area covered by the plant would be approximately 200 by 300 feet.

(Testimony of F. A. Willard.)

Q. Is there more than one building on that property?
A. Yes.

Q. Describe the size of the various buildings and tell us what they are used for. [47]

A. The manufacturing plant, the manufacturing part of the plant would be approximately a hundred—approximately 50 by 200.

Q. And is it a one-story plant?

A. Yes. That part of the plant—yes, one-story. Then there is a storage room, that is 100 by 200, and 40 feet high.

Q. And is that connected with this first manufacturing plant?

A. Yes. Then there is a day room which is a small room, and the office.

Q. Now, will you give us a brief outline of the manufacturing process as it affects the production of ice, how is it manufactured, briefly? Starting with the first operation and carrying it on through until your ice is manufactured.

A. Well, first we have what we call a freezing tank and then separate from that we have a water treating tank. The freezing tank is cooled or refrigerated by ammonia coils in the tank, and there is a space in the tank to receive cans. The treated water is put in these cans, the cans are loaded in the tank and remain there until the ice is frozen; the water is frozen.

Q. Then after it is frozen, what happens to it?

A. The cans are taken out and the ice dumped

(Testimony of F. A. Willard.)

out of them and refilled with water and put back in the tanks.

Q. After the ice is dumped out of them, what happens to the [48] ice that has been frozen?

A. Goes on a conveyor and is carried to storage.

Q. What happens to it after it is in storage?

A. Well, the sales start. The ice comes out of the storage on conveyors, out onto the platform, from there it is loaded on trucks and delivered to vegetable shippers.

Q. What employees do the first operation for the—in the manufacture, as you have just described it? What do you call them? A. Ice pullers.

Q. Ice pullers? A. Yes.

Q. Is that the first operation that the employees perform in the manufacture of ice in your plant?

A. Yes.

Q. How about the filling of these tanks with water, to start with?

A. They do all of that.

Q. The ice pullers do that, also? A. Yes.

Q. And approximately how many ice pullers do you have? How many did you have in 1941?

A. Three regular ice pullers, and a relief man.

Q. How many did you have in 1942, Mr. Willard?

A. Same number. [49]

Q. How do they go about pulling the ice? Will you describe that term to us a little bit?

A. The ice is pulled with a hoist on a traveling crane and the ice puller rides on the crane, runs the

(Testimony of F. A. Willard.)

crane over a set of cans he is going to pull and raises those cans up and carries them to the dip tank, which melts the ice and frees it from the cans and sets it in the dump and the dump tips over and the ice goes out on the conveyer, tips it back and fills with water and puts it back in the tank.

Q. The cans set down in a sort of a grille-like in the floor, that is where it is frozen? A. Yes.

Q. The conveyor is—goes along—

A. There is a group of twelve cans in what we call a frame, and he goes along and picks up the cans, the crane picks up the frame with the twelve cans.

Q. After the ice handlers are through with their occupation, who are the next group of employees to take charge of the ice?

A. In the storage room.

Q. What are those employees called?

A. They have no title, they are employed in the storage room.

Q. And approximately how many of them were there in the employ of the company in 1941?

A. When we are just storing ice, before the sales start, [50] there are three in the storeroom, and the relief man. They store the ice away in the room, and after the sales start, then there are additional men put on, depending on the sales, the volume going out.

Q. And during the peak of the season when you have the normal crew for a busy season, how many would you have of those employees, approximately?

(Testimony of F. A. Willard.)

A. The crew on the tank, the ice pullers wouldn't change, that is constant. The ice going out of the room varies, and—varies with the volume of the sales, they would have the three regular men in the storage and probably three or four extra men, and then there would be two or three men on the platform.

Q. Now, these men that work in the storage room, I understand when the ice comes in they put it around and store it in the storage room?

A. Yes.

Q. Place it around? A. Yes.

Q. When the sales begin, as you have indicated, the ice is taken out of the storage room, out onto the platform. Who does that work?

A. The men in the storage room.

Q. Are there any other men on the platform who handle the ice, besides the storage men? [51]

A. None more than the crew I mentioned.

Q. That would be the next men to take over, would be the truck drivers?

A. Yes, that is correct.

Q. And who are those truck drivers, are they employees of the company? A. Oh, yes.

Q. How many of those are there, Mr. Willard?

A. Ordinarily about three. The number of those vary with the volume of sales, too.

Q. What do those truck drivers do, where do they take the ice?

A. They take the ice from the platform to the packing houses.

(Testimony of F. A. Willard.)

Q. These are the vegetable packing companies we have been previously talking about?

A. Yes.

Mr. Whitelaw: I suggest instead of using the word "companies"—they are all not companies, some of them are individuals. That is correct, Mr. Willard?

The Witness: Yes.

Trial Examiner Mouritsen: That is correct, some of them are individuals, rather than companies or corporations?

The Witness: Not on vegetable ice, no. In the summer, during the sale of the domestic ice, then the drivers, at that time, buy the ice on the platform and deliver it themselves. [52]

Trial Examiner Mouritsen: The question was—these packing companies or packing sheds—are some of them individuals, rather than companies or corporations, to your knowledge?

The Witness: I didn't get the question quite clear.

Trial Examiner Mouritsen: Some of these customers that have been designated as the vegetable companies or sheds, do you know whether some of them are individuals, rather than companies?

The Witness: No, I couldn't answer that.

Q. (By Mr. Ryan): Now, Mr. Willard, have we mentioned all the classifications of employees that are engaged in the manufacture of ice at your plant?

A. Yes, sir.

Q. Do you have other employees, other than those

(Testimony of F. A. Willard.)

that you have mentioned, that are engaged in any operation at your place of business?

A. Some in the office, yes.

Q. Office employees? A. Yes.

Q. Approximately how many of them are there?

A. Two.

Q. Two? A. Yes.

Q. And does that complete the total number of employees you [53] have? A. Yes.

Mr. Smith: I don't believe that is clear to Mr. Willard. When he had the Diesel plant, I think he had engine room employees.

Trial Examiner Mouritsen: I understand from the answer that there is some contention with reference to a change in the nature of operations. Perhaps your question might not be clear enough on the basis, or time before the change.

Q. (By Mr. Ryan): Mr. Willard, the description of the plant operations you have just given us refers only to 1942? A. Yes, sir.

Q. Did you have reference to previous years?

Trial Examiner Mouritsen: Does it refer also to 1941, so far as the ice manufacturing operations are concerned?

The Witness: That is true.

Trial Examiner Mouritsen: Were the number of employees practically the same in the ice operations in 1941?

The Witness: Yes, sir.

Q. (By Mr. Ryan): Now, how frequently is the ice delivered to these vegetable packing customers during the season?

(Testimony of F. A. Willard.)

A. Excuse me. I think we ought to clear up the point you bring out. The description I gave you was the operation of the plant under electric power. Now, the operation of the plant before we installed electric power was quite different. [54]

Q. You might indicate the change and how it operated under Diesel power.

A. The Diesel department was eliminated entirely. We had six Diesel engines that required three operators and a relief man and two maintenance men; that part has all been eliminated with electric power.

Q. Removed the Diesel engines, have you, and replaced them with electric motors? A. Yes, sir.

Q. How many electric motors did you install?

A. There are six main electric motors now.

Q. Who takes care of the electric motors?

A. They take care of themselves.

Q. Do you have anyone who maintains them?

A. No.

Q. Who starts them and stops them?

A. They are started in the fall and shut down the next summer.

Q. They run continuously during the season?

A. Yes.

Q. Now, this ice season of yours, does it continue all during the twelve months of the year or are there certain months you consider to be your ice season?

A. Well, we start making vegetable ice around the latter part of October or early November and

(Testimony of F. A. Willard.)

that ice goes into [55] storage until our sales equal or are greater than our manufacturing capacity, then we take it out of the storage.

Trial Examiner Mouritsen: Before you go into that, Mr. Ryan, when did this change-over from Diesel to electric power take place?

The Witness: That was in the summer of 1941.

Trial Examiner Mouritsen: Can you fix that time any more definitely than that.

The Witness: Well, it was at the close of the vegetable season, which is around about the latter part of June or early in July. The plant was shut down, as soon as we shut down we started to make the change and that change was completed some time in October.

Trial Examiner Mouritsen: You have called it a change from Diesel to electric power?

The Witness: Yes.

Trial Examiner Mouritsen: The Diesel engines generated electricity?

The Witness: Yes.

Trial Examiner Mouritsen: The source of your electricity is from some other source rather than your own?

The Witness: Yes.

Q. (By Mr. Ryan): I don't believe, Mr. Willard, that you set the exact season in which your business is operating fully during the year, naming the month it begins and the [56] month when it ends.

A. We start up in the fall, some time about the

(Testimony of F. A. Willard.)

latter part of October or early November, and start making ice and that ice goes into storage until our sales more than equal our manufacturing output, and that happens usually around the middle of January. And at that time we begin taking what we call the surplus ice out of the storage and our sales will continue until some time the latter part of June; that is all on vegetable ice. And from June, for the balance of the year, we sell a small amount of domestic ice.

Q. Then during the months from June to October, about October in the fall, when you start operating heavily again, do you retain your full crew of employees between June——

A. (Interrupting): No.

Q. Just approximately how many employees do you retain during that off season?

A. The only employees that we retain during that period would be men that we would be using on maintenance work, preparing the plant for another season's run and that number would vary, sometimes it is two or three, might be a half a dozen or it might be eight.

Q. These men you refer to as using on maintenance, during the heavy season were they used as maintenance men?

A. As far as possible, yes.

Q. I didn't understand you to name any maintenance men in your [57] classifications in describing the manufacturing operation previously. Do you have any classification of employees in your plant

(Testimony of F. A. Willard.)

that are designated as maintenance men who do that work all the time?

Mr. Smith: What time do you refer to?

Mr. Ryan: All the time.

Mr. Smith: 1941 or 1942?

Mr. Ryan: 1941 and 1942.

A. In 1941 we had men that were on maintenance.

Q. (By Mr. Ryan): What did they do?

A. Principally maintenance on the Diesel engines.

Q. Are they the same men you previously referred to as operators of the Diesel engines?

A. No.

Trial Examiner Mouritsen: I think the witness referred to some maintenance.

Mr. Smith: Yes, the witness referred to three operators and a relief operator and some maintenance help.

Trial Examiner Mouritsen: Two was the figure that occurred to me.

Q. (By Mr. Ryan): Do you have any maintenance men now?

A. No, sir.

Q. During this past summer, did you keep any men on in the employ of the company from June to August? A. Yes, sir. [58]

Q. Or October? A. Yes.

Q. What did they do?

A. General repair and maintenance work around the plant.

(Testimony of F. A. Willard.)

Q. The men you have recently, during this past year, been using as maintenance men in the summer-time, during the normal season those men would be doing other jobs in the plant?

A. That is right.

Q. That is what I am trying to get at.

A. Yes.

Trial Examiner Mouritsen: How many men did you keep on for maintenance work during this last summer?

The Witness: I don't believe I could tell you that; Mr. Smith could probably give you the accurate figures on that.

Trial Examiner Mouritsen: What is your best recollection, was it one or five or ten?

The Witness: Probably four.

Q. (By Mr. Ryan): In previous years while you still had the Diesel power approximately how many men did you keep on in the summertime, Mr. Willard?

A. Well, it would be the same amount.

Q. Three or four? A. Yes. [59]

Q. Did you ever, on any occasion, keep on employees during the summer who, during the actual season, had been engine operators?

A. Yes, operators could do the maintenance in summer the same as anyone else.

Q. Did you sometimes keep on truck drivers in the summertime?

A. The truck drivers would be busy on their trucks in the summer.

(Testimony of F. A. Willard.)

Q. There were some employees, were there not, Mr. Willard, while you had the Diesel engines, who worked the year around for you, who were other than actual maintenance men?

A. That is probably so, but they would have more maintenance work to do on the engines than they have now, you see.

Trial Examiner Mouritsen: Have you used some of the ice pullers and men in the warehouse for that maintenance work, in past years, during the summer periods?

The Witness: Well, that is probably true, we did, but a maintenance man was selected for his ability to do the work we had to do, whether he came from the storeroom or the tank room or was an engine operator.

Q. (By Mr. Ryan): During the season when these vegetable packing customers are operating their sheds, how frequently are the deliveries of ice made from your plant to the individual customer's sheds?

A. Well, I couldn't very well answer that. It all depends on [60] their sales. When they want a load of ice their iceman phones up to us and orders a load of ice, and we take it down. They might ship one car today and ten cars tomorrow and they would order their ice in proportion.

Q. Do these vegetable packing customers have any storage facilities at the sheds?

A. None whatever.

(Testimony of F. A. Willard.)

Q. In other words, they are packing the vegetables in the sheds, you have to keep bringing the ice over in the quantities they need for the packing they are doing at the moment? A. Yes.

Q. Deliveries are made practically all during the vegetable packing season from your plant over to the sheds, are they not?

A. Deliveries are made every day the packing house is running. Sometimes one packing house is shut down and the others might be all running.

Trial Examiner Mouritsen: Mr. Ryan, in your question you asked about the season. You mean this period other than from, say, June to October?

Mr. Ryan: I will ask him when the vegetable season actually gets under way and approximately how long it continues.

Q. (By Mr. Ryan): Could you answer that?

A. It usually starts the latter part of December, gets up to a peak usually in February and is over some time the [61] latter part of June.

Q. June? A. Yes.

Q. And during this period, from December up until the latter part of June, you are making deliveries every day that any of these vegetable customers are operating; you are making deliveries of ice to that customer every day he operates?

A. That is true, yes.

Q. Now, Mr. Willard, these packing sheds that are used by these vegetable packing customers of yours, can you tell us who owns them?

A. The company owns them.

(Testimony of F. A. Willard.)

Q. The Holtville Ice and Cold Storage Company owns those packing sheds? A. Yes.

Q. Do you have a lease with each one of the vegetable packing customers for the use of the sheds? A. Yes, sir.

Q. Is there any provision in that lease agreement that provides that the lessor shall—lessee, I believe it is, shall receive his ice from the Holtville Ice and Cold Storage Company? A. Yes, sir.

Q. That is true of each of the vegetable packing companies, customers you supply ice to?

A. All except one. [62]

Q. Which one is that?

A. There is one that owns the—a Jap shed, but we do not own it, we have the handling of the shed.

Q. But you have a lease providing you supply them with ice? A. Yes, sir.

Q. Which one is that?

A. That is Massera.

Q. Where are these vegetable packing sheds located with respect to the railroad in the City of Holtville?

A. Well, they are located right along the railroad, right through town.

Q. What railroad is that?

A. Holtville Interurban.

Q. Pardon?

A. Holtville Interurban; that might be the Southern Pacific now.

Trial Examiner Mouritsen: You have a pretty

(Testimony of F. A. Willard.)

good idea it is a branch or subsidiary of the Southern Pacific?

The Witness: I understand it is owned by the Southern Pacific, but operates as the Holtville Interurban.

Trial Examiner Mouritsen: Does the contract provide they receive their ice exclusively from the Holtville Ice Company?

The Witness: Yes.

Trial Examiner Mouritsen: What do they do, run the cars [63] right up beside the sheds and the ice is loaded with vegetables and ice at the same time?

The Witness: Well, each shed has its own siding and the shed is so located that when a car comes up the vegetables—crates of vegetables can be loaded from the packing house right into the car. And on the opposite side of the packing house is the driveway for the trucks, the vegetables come in on trucks and the ice also comes in in the same driveway.

Q. (By Mr. Ryan): And as a rule almost as soon as a car is spotted in front of a packing shed it is filled to capacity with vegetables and it is then taken out and sent on its way? A. Yes.

Q. There is a constant movement of cars into the sheds and away from the sheds with their load of vegetables?

A. I wouldn't say a constant movement, usually they switch cars about twice a day. Each packing shed will order the number of cars they think they

(Testimony of F. A. Willard.)

will use that day and they switch them in at one time.

Q. When they are all filled they switch them back out again? A. That is it.

Q. Mr. Willard, getting back to this change-over from Diesel power to electrical power, when that change-over was made was some reconstruction of your plant necessary? [64]

A. Yes,—well, not necessarily, we did make some—made an addition to it.

Q. And in order to do that construction work did you use your own employees or did you employ others to do that for you? How did you handle that?

A. Part of it was handled on a contract and part we did ourselves.

Q. And so far as that handled on a contract was managed, what employees did that work?

A. That contract was handled through the York Machinery Corporation.

Trial Examiner Mouritsen: How do you spell that?

The Witness: Y-o-r-k.

Q. (By Mr. Ryan): And where is that company located? A. Los Angeles.

Q. What type of business are they engaged in, solely construction work?

A. No, refrigerating and ice making machinery.

Q. Did they bring down employees to work on that construction? A. Yes.

Q. How long did that construction take?

(Testimony of F. A. Willard.)

A. I think they started on that some time early in August, and completed it, I think, in early November.

Q. 1941? A. Yes, sir. [65]

Q. Some of your employees worked along with these contract men on that construction job, is that right? A. Yes.

Q. Mr. Willard, are you familiar with an organization known as the Associated Farmers of Imperial County? A. Yes.

Q. Can you tell us whether or not the Holtville Ice and Cold Storage Company is a member of that association? A. They are.

Q. Mr. Willard, does your company, as a member of the association, make contributions or pay membership fees to that? A. Yes.

Q. When did the company first become a member of the association?

A. Well, I don't recall that, but it was several years ago.

Trial Examiner Mouritsen: Before 1941?

The Witness: Yes.

Mr. Smith: I think it was in 1936.

Mr. Ryan: Miss Reporter, will you mark that document as Board's next in order for identification, please?

(The document referred to was marked as Board's Exhibit No. 4, for identification.)

Mr. Ryan: Mr. Examiner, I have had marked for identification a document bearing the name "Holtville Ice and Cold [66] Storage Company",

(Testimony of F. A. Willard.)

dated "September 29, 1942," entitled "Contributions to Associated Farmers." I show copies to counsel for the various respondents.

Off the record, please.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Mr. Smith: I will stipulate that the exhibit shows the contributions to Associated Farmers by Holtville Ice and Cold Storage Company commencing in the year 1936.

Mr. Ryan: I offer Board's Exhibit 4 in evidence.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Petersen: No objection.

Trial Examiner Mouritsen: Let me ask if these contributions were to the Associated Farmers here involved, Associated Farmers of Imperial County?

Mr. Smith: That is right.

Trial Examiner Mouritsen: Does this represent all the contributions?

Mr. Smith: Yes.

Trial Examiner Mouritsen: The document will be received in evidence as Board's Exhibit 4.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 4, was received in evidence.) [67]

(Testimony of F. A. Willard.)

BOARD'S EXHIBIT No. 4

(Copy)

HOLTVILLE ICE & COLD STORAGE CO.

Holtville, California

September 29, 1942

Contributions to Associated Farmers

Month	Journal Page #	Voucher #	Amount
November 1936	878	11-52	\$250.00
March 1938	22	2-32	1.00
January 1939	102	1-52	250.00
December 1939	187	12-54	250.00
April 1941	317	4-4	250.00
November 1941	374	11-50	150.00
February 1942	397	2-04	150.00
February 1942	397	2-09	5.00

Q. (By Mr. Ryan): Mr. Willard, are you familiar with the circumstances surrounding the occasion of the Holtville Ice and Cold Storage Company becoming a member of the Associated Farmers of Imperial County? Tell us how that came about, if you know.

A. Yes, I think so. Associated Farmers, I think I came in contact with them first in 1936, and at that time they were very active in combating subversive activities in the valley, and I don't know whether they were organized at that [68] time. Anyway, they were putting on a drive at that time and I contributed to it, and have every year since.

Q. Did anyone approach you from the Associated Farmers first or did you go to them?

(Testimony of F. A. Willard.)

A. They approached me, they were making a drive over the whole valley.

Q. Who approached you?

A. I think it was Mr. Osborne.

Q. Where did you see him on that occasion?

A. He came to my office.

Q. Did he have a conversation with you about your company becoming a member at that time?

A. Yes.

Q. Was anyone else present, other than you and Mr. Osborne? A. I don't recall there was, no.

Q. Will you give us the substance of that conversation, what you said and what he said?

A. He just reviewed what the Associated Farmers stood for and what they were doing, which I was already familiar with. It was a non-profit organization and the only way they had of existing was through membership and contributions. He asked me to contribute, which I did.

Q. Did he make any statement as to what the Associated Farmers stood for on that occasion?

A. I presume he did. [69]

Q. Do you remember what he said in regard to that? A. No, I couldn't remember that.

Q. Did he give you any document or anything on that occasion of the Associated Farmers?

A. I don't recall he did, no.

Q. Thereafter, did you have occasion to talk to Mr. Osborne? A. Oh, yes.

Q. As a representative of the Associated Farmers? A. Yes, several times.

(Testimony of F. A. Willard.)

Q. Approximately how often thereafter, in a period of a year, from year to year, did you have occasion to talk to him?

A. I couldn't say, maybe see him once a year, maybe oftener.

Q. Would he come to your plant to talk to you on those occasions?

A. Sometimes I would see him at the plant or sometimes I would see him on the street and sometimes I would see him in El Centro.

Q. Did you go to him with any problems you had?

A. No, I didn't, only in the fall of '41. I came back and found there was some union activities in the plant, and I phoned him, asked him what was going on, and asked him if he knew about it, and he told me he did, he knew all about it. And he said in a few days he would be over and see me.

Q. Approximately when was it that you called him, can you fix the month, approximately, and approximately what time [70] in the month it was?

A. It was either the latter part of September or in October along there somewhere.

Q. 1941? A. Yes.

Trial Examiner Mouritsen: We will take a short recess.

(A short recess was taken.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Ryan): After you called Mr. Osborne, as you have just indicated, Mr. Willard, did

(Testimony of F. A. Willard.)

he then come to your plant in a few days, as he said he would? A. Yes.

Q. On that occasion was anyone present, other than you and Mr. Osborne?

A. I don't recall that there was, no.

Q. Will you give us the substance of your conversation at that time, what you said and what he said, what you discussed?

A. I asked him what was going on, and he said for some time past there had been special union activities in the valley and told me that the A. F. of L. was trying to organize all the ice companies, and that they were working on it.

Q. Who was working on it?

A. The Associated Farmers.

Q. Did he tell you what they were doing in that regard?

A. No, I don't recall that he did. [71]

Q. What else was said, if anything?

A. I asked him what I should do on it, and he said I couldn't do anything.

Q. What else? Was there anything else?

A. That about covers it, I believe.

Q. Did he indicate he would do anything?

A. No, I wouldn't say that he did indicate that he could do anything for me specifically; that they were working on the general situation, see it didn't get out of hand.

Q. The Associated Farmers were?

A. Yes.

(Testimony of F. A. Willard.)

Q. Now, Mr. Willard, you are familiar, are you not, with an organization among your employees known as the Holtville Ice and Cold Storage Employees Association? A. Yes, sir.

Q. It is true, is it not, Mr. Willard, that since November 1st, or about that date, 1941, up to the present time you have been under contract with that association? A. Yes, that is true.

Q. Employees Association. Covering hours, wages and other working conditions?

A. That is true, yes, sir.

Mr. Ryan: Miss Reporter, will you please mark that document as Board's exhibit next in order, for identification?

(The document referred to was marked as Board's Exhibit No. 5, for identification.) [72]

Q. (By Mr. Ryan): The contract which has been in existence between the Association of Employees and the company since November 1, 1941, covers what group of employees?

A. All of them.

Q. All of the employees? A. Yes.

Q. Including office employees?

A. No, I don't believe it does include the office.

Q. All except office employees? A. Yes.

Q. I presume the contract will speak for itself. Sometimes they don't too plainly. That is the reason I asked that question. Mr. Willard, will you explain the supervisory system that exists in your plant? That is, what supervisors do you have there over the men?

(Testimony of F. A. Willard.)

A. There is one man in the plant that has charge of the plant and the storeroom. There is another man—— [74]

Q. (Interrupting): What is his title?

A. Superintendent.

Q. Who is he? A. Pete Pool.

Q. And how long has he been superintendent, approximately?

A. Oh, approximately four or five years.

Trial Examiner Mouritsen: Is his name correctly spelled in the complaint? P-o-o-l, is that right?

The Witness: Yes. There is another man that has charge of the ice on the platform and the delivery of ice, Tom Herring.

Q. (By Mr. Ryan): Who does the hiring and firing?

A. Well, each superintendent handles their own men.

Trial Examiner Mouritsen: Who is the second man?

The Witness: Tom Herring.

Trial Examiner Mouritsen: H-e-r-r-i-n-g?

The Witness: Yes.

Q. (By Mr. Ryan): What is his title, Mr. Willard? A. He doesn't have a title.

Q. But he is a supervisor, none the less?

A. Yes.

Q. Does he exercise the same duties of supervision over the storeroom as—or over his particular group of employees as Mr. Pool does over his?

(Testimony of F. A. Willard.)

A. Yes. [75]

Q. He hires and fires those men? A. Yes.

Q. How long has he held that position?

A. He started in the spring of '42, I think it was.

Q. Had you previously had a man on that job?

A. Yes.

Q. Who was that? A. Roy Davis.

Q. Roy Davis? A. Yes.

Q. How long had Mr. Davis been in that position?

A. Well, in that position probably three or four years, but he had been in many other positions in the plant.

Q. What had Mr. Herring been—what type of employee had he been previous to obtaining this position in the spring of 1942?

A. He had worked out of the office on collections and complaints and also handled one of our trucks.

Q. How long has he been employed by the company, approximately?

A. Well, I would make a guess at ten years.

Q. Mr. Willard, do you know where the electric power which is used by the company in the operation of its plant, where it is generated?

A. I know some of it is generated in the Sierra Mountains. I would suspect all of it is generated there. [76]

Q. Boulder Dam?

A. Well, I guess they do get some from Boulder Dam.

(Testimony of F. A. Willard.)

Q. Where in the Sierra Mountains do you have reference to? A. I couldn't tell you that.

Q. Here in California, or Nevada?

A. California.

Q. Is that a generating plant in the Sierra Mountains, or relaying plant?

A. Generating.

Q. Generating? A. Yes.

Q. Where does the company obtain the water which it uses in the operation of the plant?

A. Irrigation—no, we get it in the City of Holtville; they get it from the irrigation district.

Q. What irrigation district is that?

A. Imperial Valley.

Q. Where does that organization get its water from? A. Colorado River.

Q. How is that water transported in here from the Colorado River? A. Comes in a canal.

Q. American Canal.

A. All American Canal.

Q. Do you know where it begins? [77]

A. It begins up the river from Yuma.

Q. Arizona? A. No, California.

Trial Examiner Mouritsen: It ends where? It ends in the Imperial Valley?

The Witness: Yes.

Q. (By Mr. Ryan): Runs into the Colorado River, does it not? I mean it runs out of the Colorado River? A. Out of the Colorado, yes.

Mr. Ryan: I have no further questions of Mr. Willard at this time.

(Testimony of F. A. Willard.)

Cross Examination

By Mr. Smith:

Q. That water is taken from the bank of the Colorado River in California and transported directly by canal system into Holtville, is it not, Mr. Willard? A. Yes, it is.

Q. And insofar as you know is any of the electricity you use generated out of the state?

A. I don't know that it is, no.

Q. Now, have you ever been up Leeving Creek?

A. Yes.

Q. Power plant operated by the power company? A. Yes, I have.

Q. That is in California, is it not?

A. Yes. [78]

Q. Whatever electricity the irrigation district develops is by Diesel engine in the valley or by drops in the canal in this county, is it not?

A. That is true.

Q. Or do you buy any electric power from the irrigation district?

A. No, I don't get any electric power from them at all.

Q. Now, Mr. Willard, prior to the time you changed from Diesel power to electric power, I want you to make it just as clear as you can for the record, as to what employees you had that were in any way engaged in operating or maintaining the Diesel engines, equipment, that was used to generate electricity to run the ice plant prior to the late summer of 1941.

(Testimony of F. A. Willard.)

A. Well, we operated at that time a Diesel engine plant that generated electric power to run the ice plant. We had six Diesel engines, two of them driving electric generators and the other three directly connected or belted to compressors; now, to operate those you require three regular Diesel enginemen, a relief man and two maintenance, sometimes three maintenance men.

Q. These three men, would that be one man on each shift for three eight-hour shifts?

A. Yes.

Q. All right, go ahead.

A. That constituted what you might call the power department of [79] the plant. Now, when we changed to electricity, electric drive and power, our electric plant, that department was eliminated entirely.

Q. And did you cause to be prepared, at my request, a pay roll record showing pay roll periods ending January 15, 1941, January 15, 1942, January 15, 1943?

A. I did.

Mr. Smith: Will you mark these, please?

(The documents referred to were marked as Respondent Ice Company's Exhibits Nos. 1-A, 1-B and 1-C, for identification.)

Q. (By Mr. Smith): Now, Mr. Willard, referring to the pay roll period ending January 15, 1941.

Trial Examiner Mouritsen: Marked as what, for identification?

Q. (By Mr. Smith): What is marked Exhibit 1-A, for identification. I will ask you to state if

(Testimony of F. A. Willard.)

that pay roll shows the names of the men that were engaged in the engine room and on maintenance?

A. Yes, that is true.

Mr. Ryan: 1941, Mr. Smith?

Mr. Smith: Yes.

The Witness: '41.

Q. (By Mr. Smith): It contains the names of M. K. Stout, H. G. Miller, E. S. Jones and H. T. Pool; engine maintenance, M. Wooldridge, and L. C. Hart? [80] A. Yes.

Q. Now, that showed a total of how many men on your pay roll January 15, 1941?

A. Twenty-two men.

Q. Now, going to Exhibit 1-B, for identification, which is the pay roll period ending January 15, 1942,—Let me ask you, first, if your volume of business was just as great or greater in 1942 than it was in 1941?

A. It was greater. '41, up to that time we had delivered 1151 tons of ice, and January, '42, we delivered 1871 tons of ice.

Q. That is written on the exhibits?

A. Yes.

Q. How many did you have on the pay roll on January 15, 1942? A. Fourteen men.

Q. As against twenty-two the year previous?

A. Yes.

Q. And how was it that you could get along with the lesser number in 1942?

A. Because the engine room crew were elim-

(Testimony of F. A. Willard.)

inated entirely, six men went out of the engine room crew.

Q. You did, however, in 1942, use at least one man, M. K. Stout, that had been in the engine room, in another capacity in 1942, did you?

A. Yes. [81]

Q. I see he is in the tank room in 1942.

A. Yes, sir.

Q. Following that up a year later, Mr. Willard, you have there in Exhibit 1-C the payroll for January 15, 1943? A. Yes.

Q. How many men does that show?

A. Nineteen men.

Q. And was your volume way up January 15, 1943, over what it had been January 15, 1942?

A. Yes, shows an increase from 1871 tons to 3283 tons.

Q. What do you attribute that last increase in 1943 to? A. Well, increase in sales.

Q. Was the season earlier in 1943?

A. Yes, the season was earlier and a greater demand.

Mr. Smith: I will offer in evidence Exhibits 1-A, 1-B and 1-C.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Ryan: No objection.

Mr. Petersen: No objection.

Q. (By Mr. Smith): Mr. Willard, have you marked on the originals of 1-A, 1-B and 1-C—January 15, 1941, on Exhibit 1-A, showing the pay-

(Testimony of F. A. Willard.)

roll period of January 15, 1941, the men [82] with which you started up operations of the plant the previous fall? A. Yes, sir.

Q. And how have you indicated which men did start with you when you started up?

A. Each one of the men that is starred in this list.

Q. Will you call those off as it is marked on the original?

A. M. K. Stout, G. Harlan, S. Hogue, L. Gettle, R. H. Ireland, W. T. Morgan, G. P. Drinkard.

Mr. Smith: I notice, Mr. Examiner, the carbon copies were marked but the paper had evidently slipped and the correct marks on the copies aren't accurate.

Trial Examiner Mouritsen: I see. In any event, Mr. Willard has indicated the ones by name that were starred.

Mr. Smith: Yes, that is right.

Trial Examiner Mouritsen: Let me ask you, Mr. Willard, with reference to the time period upon which you base the various figures of the ice delivered, the total amount of ice delivered, what is the starting point in each instance?

The Witness: Well, that is ice sold to that date, January 15th.

Trial Examiner Mouritsen: All right. What is the beginning of that period?

Q. (By Mr. Smith): From when did you start counting, he means. [83]

A. From the first ton of ice that was sold.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): That would be in December?

A. We might start selling ice the latter part of December. We keep a record that comes to date for the season, start over at the end of the season.

Trial Examiner Mouritsen: My question is: Is the starting period the same in each season? If you use a longer period for one than you do for another, naturally, you wouldn't have the same basis.

The Witness: The season determines itself, that is when they start selling vegetables.

Mr. Smith: I think I can explain, Mr. Examiner. They start shipping lettuce all the way from the middle to the latter part of December here. That ice is used in the packing of vegetables, lettuce chiefly, from the beginning of the shipping season in December until January 15th of each year. Mr. Willard has indicated the number of tons of ice delivered to show the volume of ice in 1942 was about 700 tons more than it was in 1941, and a far greater increase in 1943, and yet they operated the plant with less men in both '42 and '43 than they did in '41, when they had the Diesel engines.

Trial Examiner Mouritsen: I understand that was your point.

Mr. Petersen: I want a question. What happens to the amount of ice used from January 15th to the close of the [84] shipping season? All they are telling us, even with Mr. Smith testifying, is the

(Testimony of F. A. Willard.)

amount of ice sold from the beginning of the shipping season to January 15th and then from January 15th to June. We would like to see what the total volume of ice is up to the end of the season.

Mr. Whitelaw: Take things in bites, you can't get a whole mouthful.

Trial Examiner Mouritsen: These figures, in each case, shows the amount of ice delivered is the amount of ice delivered from the beginning of the shipping season.

The Witness: Yes.

Trial Examiner Mouritsen: Which might be different in each season.

The Witness: Yes.

Trial Examiner Mouritsen: I think you stated that the period or the season in 1943, did or did not start earlier than usual?

The Witness: '43 started a little earlier.

Trial Examiner Mouritsen: How about '42, do you recall?

The Witness: Well, '42, I would say, was about a normal season, started the last of December.

Q. (By Mr. Smith): Does it vary more than a week one way or the other? A. No.

Q. (By Trial Examiner Mouritsen): In any event, do I under- [85] stand your testimony to date to be that you start putting ice up around the first of October in each year?

A. First of November.

Q. First of November in each year?

A. Yes.

(Testimony of F. A. Willard.)

Q. For a while that goes into storage, until the demand takes care of it?

A. Yes. See, this was a large year and a large number of employees, that is due to the increase of ice and the large turn-over.

Q. That pertains to Respondent Ice Company's Exhibit 1-C? A. Yes.

Trial Examiner Mouritsen: Very well. I will receive them in evidence as Respondent Ice Company's Exhibits 1-A, 1-B and 1-C.

(Thereupon the documents referred to, heretofore marked for identification as Respondent Ice Company's Exhibits Nos. 1-A, 1-B and 1-C, were received in evidence.)

RESPONDENT ICE COMPANY'S
EXHIBIT No. 1-A

Holtville Ice & Cold Storage Co. January 25, 1943.

Payroll For Period Ending Jan. 15, 1941

Engine Room:

M. K. Stout #

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers:

G. Harlan #

S. Hogue #

(Testimony of F. A. Willard.)

H. Fruhn

A. Standifer

P. Blandenship

Storeroom:

L. Gettle #

R. H. Ireland #

W. T. Morgan #

S. H. Harlan

B. Pool

R. S. Hefner

Platform & Delivery:

(Tons of ice delivered
up to Jan. 15, 1941: 1151.4)

E. Broderick

T. Herring

G. P. Drinkard #

H. C. Fredinburg

Garage Mechanic:

N. Ballard

[Pencil Note]: 22 men

RESPONDENT ICE COMPANY'S
EXHIBIT No. 1-B

Holtville Ice & Cold Storage Co. January 25, 1943
Payroll For Period Ending Jan. 15, 1942

Tank Room:

M. K. Stout

G. Harlan

(Testimony of F. A. Willard.)

S. Hogue

L. Gettle

Storeroom:

R. H. Ireland

W. T. Morgan

A. O'Neal

Oran Stephens

Dorman Stewart

Platform & Delivery:

(Tons ice delivered up
to Jan. 15, 1942: 1871.1)

S. Harlan

G. P. Drinkard

W. Faulkner

Chas. Hefner

Garage Mechanic:

N. Ballard

RESPONDENT ICE COMPANY'S
EXHIBIT No. 1-C

Holtville Ice & Cold Storage Co. January 25, 1943
Payroll For Period Ending Jan. 15, 1943.

Tank Room:

M. K. Stout

G. Harlan

S. Hogue

R. H. Ireland

(Testimony of F. A. Willard.)

Storeroom:

W. T. Morgan

Dan ONeal

Earl Cook

E. Rathert

C. Veale, Jr.

Ray Brixey

Platform & Delivery:

(Tons ice delivered up
to Jan. 15, 1943: 3283)

Ed Mauldin

G. P. Drinkard

Chas. Hefner

W. C. Hefner

Oran Stephens

J. Minyard

C. Sudduth

V. Veale

Garage Mechanic:

N. Ballard

[Pencil Note]: 19 Men—big labor turnover

Q. (By Mr. Smith): Now, I will request—
Trial Examiner Mouritsen: Pardon me just a
minute.

Q. (By Trial Examiner Mouritsen): Let me
ask you, Mr. Willard, do these pay rolls represent
the high point in number of employees in each of
these seasons?

(Testimony of F. A. Willard.)

A. No, I meant to point that out to you. We arbitrarily selected January 15th, first, because that is a pay roll [86] period and it is when we are doing a little more than normal business, but it doesn't cover February the 1st or February the 15th, which would show a big increase over that.

Q. I see.

Mr. Ryan: Big increase in the number of employees?

The Witness: Yes, that would be on the other side, whereas on this one we will put on more employees.

Q. (By Mr. Smith): Did you understand Mr. Ryan? He said those later dates show a bigger increase in the number of employees. You said, "Yes."

A. On the bigger increase, it will show a bigger increase on delivery.

Q. It will show a big increase on the amount of ice being delivered? A. Yes.

Mr. Smith: I will ask the reporter to mark this paper as Exhibit 2, for identification.

(The document referred to was marked as Respondent Ice Company's Exhibit No. 2, for identification.)

Q. (By Mr. Smith): Now, Mr. Willard, showing you a sheet of paper which is written at the top "Men used to start Plant after its being changed to an Electric Drive for 1941-42 Manufacturing Season on October 29, 1941." I will ask

(Testimony of F. A. Willard.)

you if that list of names shows the men that you used to start the plant with after you had installed the electric machinery? [87] A. Yes, sir.

Q. That shows how many employees?

A. Seven.

Q. Had you been operating with Diesel machinery how many additional would you have had there?

A. At least seven more.

Mr. Smith: I will offer that sheet of paper as Respondent Ice Company's Exhibit 2.

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Ryan: No objection.

Mr. Petersen: No objection.

Q. (By Trial Examiner Mouritsen): I assume, Mr. Willard, that both the information contained in Respondent Ice Company's Exhibits 2 and 1-A, 1-B and 1-C were taken from company records?

A. Yes.

Q. At your instructions? A. Yes.

Q. You are satisfied as to their correctness?

A. Yes.

Trial Examiner Mouritsen: I will receive in evidence Respondent Ice Company's Exhibit 2.

(Thereupon the document referred to, heretofore marked for identification as Respondent Ice Company's Exhibit No. 2, was received in evidence.) [88]

(Testimony of F. A. Willard.)

RESPONDENT ICE COMPANY'S
EXHIBIT No. 2

January 25, 1943 Holtville Ice & Cold Storage Co.
Holtville Ice and Cold Stg. Co.
Holtville, California

Men Used to Start Plant After Its Being Changed
to an Electric Drive for 1941-42 Manufacturing
Season on Oct. 29, 1941.

Tank Room:

M. K. Stout

G. Harlan

S. Hogue

L. Gettle

Storeroom:

R. H. Ireland

W. T. Morgan

G. P. Drinkard

Q. —for the past five years, would you say your slack period has commenced—

A. From the middle or the latter part of June, and run through the first of November.

Q. All right. What has been your custom each year, for the past five years, in regard to laying men off when your slack period started?

A. Well, we had to shut the plant down soon after the vegetable shipments started, and we always, wherever possible, reserved any maintenance

(Testimony of F. A. Willard.)

or repair work for that period, and in doing that, so far as possible, we would use our own employees to do it.

Q. Then was there a period after they finished doing repair and maintenance work that the big majority of them were laid [90] off until you started up machinery in October or November?

A. Yes, we would have to finish up our maintenance and repair work. If that was done before it was time to start the plant, they were laid off.

Q. As a rule, when did they finish this maintenance and repair work when you closed down in the latter part of June?

A. Nearly always we could run a repair crew right through the summer until we were ready to start up.

Q. Did you, however, lay some men off every summer?

A. Yes, we couldn't always hold all of them on all summer, but some of them we did.

Q. Mr. Willard, what has been the custom about putting those men back to work? Did you go and tell the men when you wanted them to come back or did you send word to them, or did they come to you or just how was that handled?

A. Well, most always they knew in advance when we were going to start up, and if the boys were laid off they dropped around from day to day to find out when we were going to start up. And we could always tell within a week or two weeks of when we were going to start, and tell them.

(Testimony of F. A. Willard.)

Q. Individual men, then, would come and re-apply to be put back, is that it?

A. I wouldn't say re-apply, they would come and find out when we were going to start. They would just ask somebody when they were going—

[91]

Q. There was no date set for starting up when they were laid off then? A. No.

Q. It was never a custom of sending for the men when you wanted them back?

A. Well, in some instances the superintendent might send word to certain boys to be around at a certain time, if he hadn't already seen them. There was no set practice of doing that.

Q. Isn't it a fact up until the last year or so, there has always been a waiting list of men that wanted to work there? A. Yes.

Mr. Petersen: May I ask a question? You say a waiting list of men that wanted to work there. Are you talking about old employees or fellows just out prospecting for a job?

Q. (By Mr. Smith): Maybe you can answer Mr. Petersen's question.

A. Well, the old boys, of course, wouldn't be around waiting for a job, they knew whether we were going to have it or not. There was always a crew around there every day looking for work.

Mr. Petersen: Employees who had worked for you before?

The Witness: Yes. [92]

Q. (By Mr. Smith): Can you state, without

(Testimony of F. A. Willard.)

going into numbers, Mr. Willard, whether you laid off as many men at the close of the season in 1941 as you normally had, except those that had been running the Diesel machinery, and maintenance?

A. Well, there was no change in the practice, the men that had been running the engines still stayed on and did maintenance work all through that summer.

Q. What work did you have those enginemen and maintenance men do while you were changing the plant from Diesel work to the electric power?

[93]

Mr. Smith: I would like to look at my notes just a second.

I don't believe I will put on my case in chief at this time. I am just covering a few things covered by Mr. Ryan. I believe that is all of the cross examination I will indulge in at this time. I will put Mr. Willard on the defense in chief and go over everything.

Trial Examiner Mouritsen: Anything further of this witness?

Mr. Peterson: I have some questions.

Mr. Ryan: I want to ask him a few questions.

Mr. Peterson: You can have yours first. [94]

Redirect Examination

Q. (By Mr. Ryan): Mr. Willard, looking at these pay rolls, which are in evidence as Company's Exhibits 1-A, B and C, there are employees on there, are there not, at least there are in Company's Exhibits 1-B and 1-C, that had never worked for

(Testimony of F. A. Willard.)

the company prior to those seasons covered by the pay roll? Starting with the first *on*, Company's Exhibit 1-A. Are there any employees who had never worked for the company before the 1941 season on there? A. January 15, '41?

Q. Yes.

A. Well, I couldn't say about that. That is when the company was operating at normal operation.

Q. Well, going over then to Company's Exhibit 1-B. Are there any employees on there who had not worked for the company in previous seasons?

A. There are two men, Stephens and Stewart. I don't recall them, they might be new men.

Q. Are there any others on that?

A. No, sir.

Q. Had Faulkner worked for the company previously, do you know, Mr. Willard, W. Faulkner?

A. Faulkner. He might be a new man, I don't recall him. [95]

Recross Examination

Q. I thought that was entirely different. Now, you stated that the electrical operation is self-sustaining, that the electrical motors run by themselves. Who oils the electrical motors, or don't they need oiling?

A. They are oiled about once a year.

Q. Once a year? A. Yes.

Q. Do you ever have any running repairs on the electric motors whatsoever? A. Yes, we do.

(Testimony of F. A. Willard.)

Q. Who does those?

A. Mr. Bush in El Centro.

Q. You have that done now by a private contractor?

A. Any work he would do would have to be done by private contract.

Q. You are doing it by private contract instead of the Diesel engines you were doing the maintenance work with your crew in the plant? [100]

A. No, that isn't right. The maintenance you would have to electric motors has to be done by an expert, which we don't have, never had. About all that can happen to a Diesel motor is the bearing to burn out.

Q. Did your maintenance men, while you were overhauling the Diesel engines, put in any new bearings? A. Oh, yes.

Q. You had men that could put in bearings before? A. Yes, on Diesel.

Q. Is there any difference in the bearing on a Diesel engine and the bearing on a motor?

A. Yes.

Q. What is the principal difference?

A. Diesel engine bearing comes prepared, a Diesel engine is made purposely for the easily replacing of the bearing. At that time we rebored them, rebored the sites, and put them in. The electrical motor, we don't have the bearing and we are not prepared to do it.

Q. Can you buy a bearing for replacement, do you know?

(Testimony of F. A. Willard.)

A. Yes; you might not be able to now.

Q. You were operating your generating equipment, which is also a motor? A dynamo is a motor?

A. Its ability is about the same.

Q. You had bearings on the dynamos, didn't you? A. Yes. [101]

Q. Your maintenance crew replaced those bearings on the dynamos?

A. I don't recall we ever had any repairs to do on them.

Q. The bearings and everything stood up as far as the dynamos were concerned?

A. There was one engine we replaced a bearing on, that is the only one I can recall in the whole operation.

Q. Did you ever have any other repair work that you had to do on dynamos? Not on the Diesel motors but the dynamos?

A. Yes, we recently had a motor burn out a bearing and it was replaced by Bush.

Q. That is a motor?

A. I mean on dynamos.

Q. When you had dynamos generating your electricity, did you ever have any repair work?

A. No.

Q. When was the change-over entirely made between Diesel and electricity for power?

A. Well, that was a gradual operation. It started at the time we shut down the plant and it wasn't completed until, I think, soon after November, that fall.

(Testimony of F. A. Willard.)

Q. Did the boys who were working for you as engineers all hire as engineers when they were first hired by your company? A. No.

Q. They worked in other jobs around the plant?

A. Yes. [102]

Q. When these boys were laid off, did you offer them a chance to work at any other position?

A. No.

Q. At the plant? A. No.

Q. There was nothing said about their coming back, going back to any other kind of work whatever, that they had previously performed?

A. No, there was not, we selected the crew we wanted to start the plant up on, and those were the only ones that were notified.

Q. Did some of the boys in the engine room have seniority over other employees down there as far as length of time they had worked for your company?

Mr. Smith: I want to object to that question at this time. I purposely avoided to name those laid off. I intended to go into every one of them individually in my defense. It will save going over this thing twice.

Trial Examiner Mouritsen: I notice Mr. Ryan didn't go into that, perhaps he had some object in his presentation. Let's wait until it is opened up.

Q. (By Mr. Petersen): You stated that your company owns these sheds and you deliver the ice to the various packing sheds. Do you have any

(Testimony of F. A. Willard.)

mechanical equipment in those sheds for the handling of ice? A. Some of them, yes.

Q. Does your company keep up that mechanical equipment or [103] does the packing company?

A. The packing house is supposed to keep it up, it is in the contract to keep it up. We do some work on it, very little.

Q. You do some work in keeping that up?

A. Yes.

Q. Who used to do that work in the past, we will say, previous to October, 1941?

A. Well, once in a while Lester Hart or Marion Wooldridge would do some work in one of the sheds.

Q. Who does that work now?

A. The packing house and sometimes Pete Pool goes down and does a little work in the shed.

Q. You mean Mr. Pool? A. Yes.

Q. You just stated that at the commencement of the season in November, 1941, you already had your crew picked out you were going to work for that packing season, that is, the key crew, is that right? A. Yes, sir.

Q. Was that your general practice of picking out the crew ahead of time?

A. Well, we never had occasion to do it before.

Q. What do you mean by that?

A. Well, just what I said. We never had that kind of an [104] occasion to arise.

Q. In other words, you never had to decide who you were going to lay off or who you weren't going to lay off, is that it?

(Testimony of F. A. Willard.)

A. That is right, yes, sir.

Q. Now, these employees you had decided you were going to keep after November, 1941, and work there, did you notify those employees they were to come back to work?

A. The ones we were going to start the plant with?

Q. Yes. A. Yes.

Q. You notified each one of them individually?

A. Yes.

Q. You didn't notify any of the employees that you laid off concerning the possibility of their being on in any way, shape or form?

A. No, we didn't. [105]

Q. (By Mr. Petersen): Did Mr. Osborne call you when you came back from the east?

A. No, sir.

Q. Did you call Mr. Osborne? A. Yes, sir.

Q. What did you say to Mr. Osborne?

A. I told Mr. Osborne there was some union activities around the plant, and asked him if he knew anything about it.

Q. What did he say? [106]

A. He said, yes, he knew all about it and he would be over and see me in a few days.

Q. Did he come over to see you in a few days?

A. Yes.

Q. What did he say then about the union activity he knew all about? A. That is already——

Trial Examiner Mouritsen: Tell us again, Mr. Willard.

(Testimony of F. A. Willard.)

The Witness: He said there was union activities in the Valley, all over the Valley, and that the A. F. of L. was apparently trying to unionize the ice industry in the Valley. I asked him what I should do about any situation. He said I shouldn't do anything.

Q. (By Mr. Petersen): How long was Mr. Osborne there at that meeting?

A. Well, I couldn't say.

Q. Approximately? A. Maybe an hour.

Q. Is that all you and Mr. Osborne said, the few statements you just put in the record?

A. That would cover the whole of it, yes.

Q. Did Mr. Osborne go into any details concerning his knowledge of the organizational campaign?

A. I don't believe I understand the question.

Q. Did Mr. Osborne give you any idea of his source of [107] information concerning the organizing of the Teamsters?

A. The organizing of what?

Q. The ice plants.

A. No, I don't think he did. I do recall he told me that the—some baking company here in town had some difficulties, and the employees had organized their own union; I recall he told me that.

Q. Did Mr. Osborne tell you about contacting any of the other ice companies in the Valley here?

A. No, I don't recall that he did.

Q. Did Mr. Osborne go into the subject of independent unions with you?

(Testimony of F. A. Willard.)

A. Well, if he did I don't recall it. I know he told me about this bakery company, employees forming a union there. Now, I believe I am wrong on that. I believe it was this wholesale grocery company he told me about, employees formed their own union. [108]

H. T. OSBORNE,

called as a witness by and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. State your full name.

A. H. T. Osborne.

Q. Where do you live?

A. Four miles south of El Centro.

Q. What is your occupation?

A. Farmer, member of the Board of Supervisors, and Secretary-Manager of the Associated Farmers of Imperial County.

Q. You operate a farm in the vicinity of El Centro?

A. Yes, sir.

Q. Engaged in—you raise what on this farm?

A. Alfalfa and some livestock.

Q. Did you say you were secretary-manager of the Associated Farmers of Imperial Valley?

A. Yes.

Q. Imperial County. Will you give us a description of the Associated Farmers of Imperial

(Testimony of H. T. Osborne.)

County as to when it was organized, by whom and for what purpose?

Mr. Whitelaw: Just a minute. Object to by whom it was organized as being wholly immaterial. [115]

A. Organized by a group of farmers.

Trial Examiner Mouritsen: I will permit him to answer. Tell us, generally.

I don't see any point in going through the specific names unless you desire to.

The Witness: A group of farmers in Imperial County, for the purpose of combating subversive and radical activities.

Q. (By Mr. Ryan): In Imperial County?

A. In Imperial County primarily. The Associated Farmers of California is similar in organization to the American Legion; Federation of Counties organized as this one here.

Q. The Associated Farmers of California is a statewide organization, is it not? A. Yes.

Q. What connection with that organization does the Associated Farmers of Imperial County have?

A. A unit.

Q. A unit of the state organization?

A. Yes.

Q. Which one was organized first, if you know?

A. Associated Farmers of California.

Q. How many units are there, other than the Associated Farmers of Imperial County? [116]

A. Approximately forty-two.

(Testimony of H. T. Osborne.)

Q. Are they all county units located in California? A. Yes.

Q. Associated Farmers of Imperial County is an incorporated organization? A. Yes.

Q. When was it incorporated?

A. I think—about in 1936.

Q. Where was it incorporated in the State of California? A. El Centro.

Q. A California corporation? A. Yes.

[117]

Mr. Ryan: Who are the officers of the Associated Farmers of Imperial County? [118]

Mr. Whitelaw: At the present time?

Q. (By Mr. Ryan): The present time.

A. Mr. G. G. Bennett is the president.

Q. How long has he been president?

A. Since 1938.

Q. Who are the other officers?

A. The vice-president is Mr. Harvey Hastings of Brawley. The treasurer is Mr. C. H. H. Small. And I am the secretary-manager.

Q. Is there a Board of Directors?

A. A Board of Directors.

Q. Who are the members of the Board of Directors?

A. I couldn't give you the accurate list, I can give it to you later on. I can't give it to you now.

Q. Will you get it? A. Yes, I will.

Q. How long have you been secretary-manager of the Associated Farmers?

A. Since July, 1937. [119]

(Testimony of H. T. Osborne.)

Q. I am interested in obtaining from you, Mr. Osborne, a general overall picture of just what you have to do, what you have been doing as secretary-manager of the Associated Farmers of Imperial County, to carry out your duties?

Mr. Whitelaw: I object to the question on the grounds that the answer sought is a compound and involved one. It has nothing to do at all with the subject matter of the examination, it is entirely too remote.

Trial Examiner Mouritsen: I will overrule the objection. I think the witness can tell us generally what he has done and his duties, give us a general idea at least.

The Witness: Generally speaking, it is a protection of the agricultural industry of this county.

Q. (By Mr. Ryan): Protection of what sort, Mr. Osborne?

A. Agricultural industry of this county.

Q. What sort of protection?

A. Protection against radical activities and subversive activities.

Q. And from your experience, what does the Associated Farmers interpret as being radical and subversive activities?

A. Taking subversive activities, it might be explained in this way: In 1929 the Communist Party came into the [123] Valley, established headquarters and proceeded, through their group, and their activities, to disturb the economic set-up in this county.

(Testimony of H. T. Osborne.)

Q. Did that group come in as a labor organization or as a political party at that time, Mr. Osborne?

A. First it was the promotion of the Communist theory of government, and subsequently it became a labor set-up.

Trial Examiner Mouritsen: Mr. Osborne, weren't those people taken care of by the duly constituted authorities of the Valley? Weren't they imprisoned? As I recall they were.

The Witness: The first group were, they were tried in 1929 and a number of them sent to the penitentiary under the Criminal Syndicalism Act.

Q. Under what group in the Valley did this group work, as it were, this subversive group? Was there any particular group in the Valley they sought to work among?

A. Separate groups. The largest group were field workers.

Q. Field workers in the vegetable raising business here?

A. That was the largest group, they did not confine their attentions entirely to that group, they worked on other groups.

Q. What were some of the other groups?

A. Men who worked in the sheds, white help.

Q. In 1929 the Associated Farmers had not yet been formed? [124]

A. No, it had not.

Q. And so after those early subversive elements, as you have referred to them, were prosecuted, as

(Testimony of H. T. Osborne.)

I understand, was there a subsequent recurrence of that? A. Yes.

Q. Or at least what you interpreted to be a recurrence? A. Yes.

Q. Did the Associated Farmers become interested then?

A. We did not exist at that particular time?

Q. Did you later? A. Later, yes.

Q. When the Associated Farmers of Imperial County were formed, what acts did the Associated Farmers take to intervene with that situation which you considered to be a recurrence of subversive activities?

A. A campaign of education to inform our people of the program, as we learned it and understood it.

Q. When you refer to "our people", just what particular groups do you have reference to?

A. The public of Imperial County.

Q. That would include both employers and employees? A. Yes, sir.

Q. And citizens? A. Yes. [125]

Q. Does this document represent any enunciation of any certain principles of the Associated Farmers? A. In a general way, yes. [128]

Q. (By Mr. Ryan): The Associated Farmers, however, did keep that bulletin in their booth as an exhibit during the Fair and give it out to anyone who would be interested?

A. That is my understanding. [129]

(Testimony of H. T. Osborne.)

Q. (By Mr. Ryan): Mr. Osborne, looking at Board's 6-B, can you tell us what it is?

A. That is——

Mr. Whitelaw: It speaks for itself.

Trial Examiner Mouritsen: I will let him answer it.

A. Declaration of Principles.

Q. (By Mr. Ryan): Of the Associated Farmers?

A. Yes, of Imperial County.

Q. Do you know by whom that was prepared?

A. Yes.

Q. By whom? [130]

A. By Mr. Bennett and myself.

Q. And what was done with that document after it was prepared?

A. It was attached to a bulletin and sent to the membership.

Q. Of the Associated Farmers?

A. Yes, and it has been distributed.

Q. To the Associated Farmers?

A. To those, to other people as well.

Q. How was the distribution made to other people?

A. Personal application mainly.

Q. Who paid for the printing up of that document and the distribution?

A. Done in my office.

Q. Was there any expense in connection with the preparation or circulation?

A. No, not outside of postage.

Q. Do you have authority in your possession to do such things on behalf of the Associated Farmers?

(Testimony of H. T. Osborne.)

A. I do.

Q. Does Mr. Bennett also? A. Yes, sir.

Q. (By Trial Examiner Mouritsen): I take it this is a document that was put out by the Imperial County branch of the Associated Farmers?

A. Yes, indeed. [131]

Q. (By Mr. Ryan): Mr. Osborne, was this document ever posted generally throughout the packing sheds throughout this Valley?

A. Yes.

Q. When was that done?

A. It has been done several times, but the first, I think, was in 1938. I am not sure of that, but approximately that time.

Q. It has been done from time to time since then? A. That is right.

Q. And by whom was the posting done?

A. By myself and Mr. Bennett.

Q. Did you have the sanction of the Associated Farmers in doing that? A. We did.

Mr. Ryan: I offer Board's Exhibit 6-B in evidence.

Mr. Whitelaw: No objection to that one.

Trial Examiner Mouritsen: Any objection, Mr. Smith?

Mr. Smith: The only objection I have is that there is no showing it was ever called to the Holtville's attention or it ever came within their knowledge. I don't believe they would be bound by what is contained in it.

(Testimony of H. T. Osborne.)

Q. (By Mr. Ryan): Was it ever posted in the plant of the Holtville Ice and Cold Storage, do you know?

A. I don't know, I don't think so. [132]

Trial Examiner Mouritsen: I will overrule the objection and receive it as Board's Exhibit 6-B.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 6-B, was received in evidence.

BOARD'S EXHIBIT No. 6-A

Farmers! Laborers! Businessmen!

We Associated Farmers Believe in Liberty, Personal Individual Human Liberty.

We Believe in All Possible Social Gains, and in the Steady Elimination of Economic Maladjustments. But We Want These Things Without the Sacrifice of Liberty.

We Don't Believe Any Real or Fancied Economic Advantage, or the Promise of Such Is Any Justification for the Destruction of Human Liberty.

We Will Subscribe to Any Plan for the Improvement of the Economic or Social Status of Any Group, as Long as It Doesn't Entail the Destruction of Anyone's Personal Liberty.

We Believe in Liberty as a Principle of Government. Therefore, It Concerns Us Just as Much to Preserve the Liberty of Others as to Preserve Our Own. We Realize That When a Principle of Government Is Broken Down for One It Is Broken Down for All.

(Testimony of H. T. Osborne.)

We Associated Farmers Are Pledged to Accept Nothing Less for Ourselves and Those About Us Than the Exercise of Our Full Legal and Constitutional Rights of Personal Liberty.

We Will Fight Any Group, Any Place, Any Time That Tries to Destroy the Personal Liberty of Anybody.

We Never Fight Progress. We Only Fight the Reactionary Philosophy of Slavery That Is Too Often Coupled With Schemes for Economic Improvement.

If You Also Believe in Liberty as a Principle, as an Ideal and as a Workable Philosophy, Then You Belong With Us.

Join Now.

G. G. BENNETT

G. G. Bennett, President

Associated Farmers of
Imperial County

BOARD'S EXHIBIT No. 6-B

"Associated Farmers"

Declaration of Law and Order

Declaration of the Principles and Objectives of the Associated Farmers of Imperial County in Regard to Any and All Labor Disturbances.

This organization will use all of its power and influence for the protection:

First, of the lawful rights of every man to join

(Testimony of H. T. Osborne.)

and be active in any labor organization he chooses.

Second, the right of every man to choose his own representative for collective bargaining.

Third, the right of every man to collective bargaining.

Fourth, the right of every man to join in a strike for the betterment of his wages and working condition.

Fifth, the right of every man to bargain for himself for the sale of his own labor.

Sixth, the right of every man to refuse to join a union, if he so chooses.

Seventh, the right of every man to use the highways for any lawful purpose, including his right to the peaceful and unmolested use of the highways in going to and coming from his work, even though his route passes through a picket line.

Eighth, the right of every man to demand the protection of the law and law enforcement officers in the exercise of these rights.

Therefore the Associated Farmers of Imperial County demand of the law enforcement officers and officials, both city and county, that they become exceedingly diligent in the protection of these legal and constitutional rights of all the people. In the event of strikes or labor controversies of any kind every man will be protected fully in all his legal rights. Any issue arising between an employer and his employee must be settled on economic grounds alone and the weapons of fear and intimidation will not be tolerated.

(Testimony of H. T. Osborne.)

Lawlessness and mob violence are things for the past in this county.

The man power of the Associated Farmers of Imperial County will work in cooperation with and under the direction of the law enforcing officers of this county for the enforcement of this program.

This resolution was passed by unanimous vote of the Directors of the Associated Farmers of Imperial County, January 23, 1939.

G. G. BENNETT

G. G. Bennett, President

Q. (By Mr. Ryan): Mr. Osborne, as secretary-manager of the Associated Farmers of Imperial County, can you tell us whether or not that organization is autonomous or whether it is subject to certain rulings and restrictions of the State organization? A. It is practically autonomous.

Q. And what is there that would keep it from being completely autonomous? You use the word "practically", so [133] I assume there is something—

A. Yes. Some policy regarding some particular activity might be defined by the State organization and be of no particular concern of ours, but we would adhere to it.

Q. Can you give us an example of one of those that has occurred in the past?

A. Yes. The State organization—stated here

(Testimony of H. T. Osborne.)

last summer at the hearing—was not in favor of local associations.

Q. Local employees' associations?

A. That is right. We are.

Q. Was there ever any discussion between the local Associated Farmers of Imperial County and the State on that? A. There has been.

Q. There has been? A. Yes.

Q. As I understand it, your organization took the position it was in favor of them and the state was not. What was said in that connection, do you know, by the Associated Farmers organization?

Trial Examiner Mouritsen: Which one?

Mr. Ryan: The Associated Farmers of Imperial County.

Mr. Whitelaw: I think what was said——

Mr. Smith: Object to it as being hearsay so far as the respondent ice company is concerned, we weren't present. [134]

Trial Examiner Mouritsen: Wouldn't you be primarily interested in what the local organization decided to do?

Mr. Ryan: Well, that is what I am getting at. Maybe it isn't clear.

Q. (By Mr. Ryan): I want you to state the position that the Associated Farmers of Imperial County took on that matter and what expression of that position was made by any representative of the Associated Farmers.

A. I can answer it, Mr. Ryan, if you would ask

(Testimony of H. T. Osborne.)

what the attitude of the State organization was, and I could explain ours then.

Trial Examiner Mouritsen: Can't you explain yours without explaining that of the State?

The Witness: The State objected to local associations being formed. Their reason was that these local associations would be taken over by one of the major unions.

Q. (By Mr. Ryan): Referring either to the A. F. of L. or the C. I. O., or both?

A. That is right.

Q. What was the position of the Associated Farmers of Imperial County, if you know, on that?

A. Our position was that we would organize them and if the labor organizations could sell their merchandise to these new associations, O. K.

Q. In other words, the Associated Farmers of Imperial County, [135] were willing to take that chance, is that right? A. Exactly so.

Trial Examiner Mouritsen: What was the date of this meeting, this last one? Did I miss that or is it pretty clear? When did that occur?

Q. (By Mr. Ryan): When did this difference of opinion regarding the Association matter take place, when did that come in?

A. I can't recall.

Q. Can you give us an estimate?

A. Not very close.

Q. Was it 1938 or '39, or what year was it?

A. I couldn't tell you exactly.

Q. (By Trial Examiner Mouritsen): Let me

(Testimony of H. T. Osborne.)

ask you, Mr. Osborne, what was the final outcome, did you decide to go along with the State association or did you decide to maintain your viewpoint?

A. The evidence is that we maintained our viewpoint.

Q. In other words, you continued to operate in that fashion, although the State organization did not favor it, is that correct?

A. That is correct.

Q. Would you say that that has been the policy then of the local association, meaning the Associated Farmers of Imperial County, for the last two years or three years, at [136] the least?

A. Yes, sir.

Q. Let's see, we started out on this association example wherein you were not practically autonomous, that would be an indication to me that you would be pretty autonomous where you operate contrary to the rules established by the States association. Isn't that correct?

A. Yes.

Q. I am interested in establishing the approximate time when that position was taken by the Associated Farmers and proceeded to carry out their position, even though the State association didn't agree with you. Didn't you fix that for the past three years which covers everything in this period, as I see it?

Q. (By Mr. Ryan): Mr. Osborne, as secretary-manager of the Associated Farmers, do you have occasion to contact members from time to time?

A. I do.

(Testimony of H. T. Osborne.)

Trial Examiner Mouritsen: We will take a short recess.

(A short recess was taken.)

Trial Examiner Mouritsen: The hearing will come to order. The hearing will be in session.

Q. (By Mr. Ryan): What is the general nature of the reasons for which you would contact members of the Associated Farmers? [137]

A. Matters of legislation, discussion of policy, and general information about what is going on.

Q. In what connection.

A. Subversive activities or radical activities.

Q. Is it your job to keep the members advised on those matters? A. To a large extent.

Q. Is it your job also to keep them advised on matters pertaining to their employees, such as organizations efforts occurring among employees?

Mr. Smith: Object to that as leading and suggestive.

Trial Examiner Mouritsen: I will overrule the objection.

A. To a certain extent.

Q. (By Mr. Ryan): Regarding the Holtville Ice and Cold Storage Company, do you know anything about the circumstances leading up to that company's becoming a member of the Associated Farmers? A. Yes.

Q. Did you personally have any contact with the company in that regard?

A. With Mr. Willard.

(Testimony of H. T. Osborne.)

Q. When did that contact first occur?

A. 1936; 1936, I believe.

Q. What was the purpose of the contact at that time? [138]

A. To explain our organization, its motives and activities.

Q. To Mr. Willard? A. Yes.

Q. Was anyone present, Mr. Osborne, during that discussion? A. I am not sure.

Q. Where did the meeting take place?

A. In his office.

Q. What part of the year, 1936, was it?

A. Shortly after we were organized, I can't remember the exact time.

Trial Examiner Mouritsen: Board's Exhibit 4 shows a contribution was made in November, 1936, by the respondent ice company. At the time you first saw him, did he make a contribution?

The Witness: I think he mailed that in, I am not certain. Some of those were mailed in.

Trial Examiner Mouritsen: Did he send it in shortly after you first talked with him? I am merely attempting to establish the time.

The Witness: I was not the secretary-manager at that time, I don't recall, it was a long time ago. That was the idea, to talk to him about the——

Q. (By Mr. Ryan): Can you give us the general substance of your conversation with Mr. Willard at that time? A. Yes. [139]

Q. Will you do that, Mr. Osborne?

(Testimony of H. T. Osborne.)

A. I explained to Mr. Willard why we were organized. He was very well informed on events that took place in this Valley.

Q. What particular events?

A. Along subversive lines and radical lines, and I explained to him the set-up so far as the State of California was concerned; the Associated Farmers of California, I should say. [140]

Q. (By Mr. Ryan): Give us your best recollection of what you said.

A. We reviewed what had taken place in the past. We reviewed the situation in the 1935 Legislature with reference to the Criminal Syndicalism Act and the opposition by radical and subversive groups to our program to sustain the act and keep it on the statute books.

Q. The Syndicalism Act?

A. That is right.

Q. And what explanation, if any, did you give him as to the purpose of the Associated Farmers of Imperial County at that time?

A. That we were going to be vigilant and watch for any recurrence of what had taken place in previous years, and we were going to try to protect the right of, not only the employer, but the employee, of any radical move on the part of anybody.

Q. And what was the standard by which you judged the matter of radicalism? What did you base that judgment on?

A. On what happened at different times to our people.

(Testimony of H. T. Osborne.)

Q. Who has been guilty of radicalism? Who has been [141] chiefly guilty of radicalism, if you know?

A. Various union leaders, not only here, but in other parts of the State.

Q. Those labor unions affiliated with any particular labor organization? A. Yes.

Q. Which ones in particular?

A. Two major organizations, the C. I. O. and the A. F. of L.

Q. And what had they been doing that you judged to be radical, that you are basing your judgment of radicalism on?

A. Principally what happened around the northern part of the State, San Francisco and some of the northern agricultural counties.

Q. You mean strikes and things like that?

A. Yes, and threats.

Mr. Smith: I think the word "strikes", interposed by Mr. Ryan, is leading and suggestive.

Trial Examiner Mouritsen: I will overrule the objection. Mr. Osborne is an intelligent witness, he made the designation he thought necessary to that particular question. If he disagrees with Mr. Ryan I am sure he will state it.

Q. (By Mr. Ryan): Are there any other reasons that you based your judgment of radicalism on in regard to those two organizations?

A. Principally that, we had no trouble here outside of [142] Communistic differences at that time.

(Testimony of H. T. Osborne.)

Q. Then thereafter, did you have occasion to meet with Mr. Willard from time to time, or not?

A. Yes.

Q. About how often on a yearly basis?

A. Why, I met him—I have known Mr. Willard, been friendly with him for a good many years, met him at the Golf Club and other places, on the street, public meetings.

Q. Did he ever have occasion to contact you?

A. Not to any extent. He would come to my office, friendly call.

Q. There for any business purposes?

A. Not particularly, no.

Q. In the fall of 1941, did you have any contact with Mr. Willard at any time? A. I did.

Q. When did you have such a contact?

A. It was the latter part of September, or the first of October, somewhere along in there.

Q. Can you explain the nature of that contact, how it came about?

A. Yes. Mr. Willard called me on the phone, told me that he had had some trouble, and I contacted him.

Q. Where were you at the time you were called?

A. In my office at the court house. [143]

Q. That is the Associated Farmers' office?

A. That is right.

Q. Go ahead. What was said?

A. I talked to Mr. Willard, spent some little time with him. I hadn't seen him since he had been on his vacation.

(Testimony of H. T. Osborne.)

Q. Are you still referring to a telephone conversation? A. No.

Q. Did he indicate to you when he called you on the telephone, what that trouble was?

A. Yes, he did.

Q. What did he say in that regard?

A. I don't recall just what he said.

Q. Did he tell you what kind of trouble it was?

A. Yes.

Q. What did he say about it?

A. I don't recall just what he said. He told me of his trouble there, the labor situation. I told him I would see him.

Q. Did you thereafter go and see Mr. Willard?

A. I did.

Q. About how much later?

A. I think the next day.

Q. Where did you meet him?

A. I met him in his office.

Q. Was anyone else present at that time? [144]

A. No.

Q. Tell us what the conversation was about on that occasion, what you said and what he said.

A. The conversation was about his situation there. We also talked about his vacation trip.

Trial Examiner Mouritsen: Mr. Osborne, the conversation was about the situation there, that means——

The Witness: About his labor situation.

Trial Examiner Mouritsen: Tell us, in general, what he said.

(Testimony of H. T. Osborne.)

Q. (By Mr. Ryan): Give us the substance of what you said and what he said about the labor situation.

A. He told me that there had been a disturbance in his working force, and I told him that I knew a great deal about it.

Q. What did you know about it?

A. I have had some contacts locally and in Holtville and knew what was going on.

Q. What was going on?

A. Unionization of the ice industry.

Q. By what organization?

A. By—principally under the direction of the Teamsters Union.

Q. Affiliated with the American Federation of Labor?

A. That is right. [145]

Q. What contacts did you have, Mr. Osborne, that gave you that information?

A. Boys that worked in the ice plants.

Q. Was that the disturbance that Mr. Willard was talking to you about, the organization by the Teamsters in the plants?

A. That is right.

Q. What did he say to you?

A. Well, Mr. Willard did not know just what his position was, what he could do about it. I told him there was nothing he could do about it without violating the Act.

Q. Did he say anything else to you?

A. No, he was somewhat perturbed. I don't recall just what he said but I advised him to keep hands off.

(Testimony of H. T. Osborne.)

Q. Do you remember anything else?

A. No, I don't.

Q. You testified in the hearing which was held last fall in this hotel by the Labor Board, did you not, in which you were answering a subpoena duces tecum in this matter, in this same case?

A. Yes. [146]

Q. (By Mr. Ryan): Mr. Osborne, I show the transcript of the hearing in the matter of Holtville Ice and Cold Storage Company, et al, and Chauffeurs, Teamsters and Helpers, Local 898, A. F. of L. The hearing occurred on September 29, 1942, and I direct your attention to page 75 thereof, which recites——

Mr. Whitelaw: What page? [147]

Mr. Ryan: Page 75.

Q. (By Mr. Ryan): It purports to recite some of your testimony. I direct your attention to what purports to be your answer, line 8, page 75, and ask you to read that.

(Witness complies.)

Q. Is that correct?

A. As I said in my next sentence there, it is about the gist of it.

Q. I quote from the record: "Mr. Willard said, 'Your are fairly well versed in Labor Relations, you know the situation here in the Valley, you know something about my own situation. I would like you to interest yourself in this situation.'"

A. The next sentence——

Q. "That was about the gist of it. I did so."

(Testimony of H. T. Osborne.)

Q. (By Trial Examiner Mouritsen): Does that refer, Mr. Osborne, to this same conversation you are now giving us?

A. I take it that is what it was.

Q. Does that refresh your recollection as to what was said on that occasion, in more detail, as to what Mr. Willard said?

A. Mr. Willard was looking for some advice, and I told him——

Mr. Smith (Interrupting): I object to that as a conclusion and opinion of the witness.

Trial Examiner Mouritsen: I will overrule the objection. [148] Answer the question.

The Witness: I told him that he could not interfere in any way in this matter, and I told him I would make an investigation of the situation, and did so.

Q. (By Mr. Ryan): Did you also tell him what you would do after you had made an investigation?

A. No, sir.

Q. But you did say, in substance, and effect, what is set forth here in the record that Mr. Willard said, "You are fairly well versed in Labor Relations, you know the situation here in the Valley, you know something about my own situation. I would like you to interest yourself in the situation." He did say that to you?

A. Well, approximately that, I couldn't repeat his exact words at this time.

Mr. Whitelaw: I think the Examiner should

(Testimony of H. T. Osborne.)

explain to the witness he has a right to answer "Yes" or "No", and then explain his answer if he wants to; all witnesses should be instructed that way. This is the kind of a question, it is a very delicate question here and I think Mr. Osborne should be given that advantage instead of saying "Yes" or "No" to Mr. Ryan's question.

Trial Examiner Mouritsen: I will so advise him. Mr. Osborne, you are directed to answer the questions as simply and directly as you can. If you feel an explanation [149] is necessary in order that it be fully understood, you may make it.

Q. (By Mr. Ryan): Mr. Osborne, after this conversation you have just testified about in Mr. Willard's office, did you proceed to make an investigation? A. I did.

Q. Of the labor situation among the employees of the Holtville Ice and Cold Storage Company?

A. I did.

Q. How soon after this meeting in the office did you proceed with such investigation?

A. I think a day or maybe two days, I think it was the next day.

Q. What did you do in conducting this investigation? How did you go about it?

A. I contacted several of the boys who worked in the—had been working in the plant; I guess they were still working at that time.

Q. Can you name them?

A. That is where I picked up my information.

Q. Can you name them?

(Testimony of H. T. Osborne.)

A. Tom Herring, George Harlan.

Q. Where did you contact Tom Herring?

A. I can't recall, I believe it was in the drug-store.

Q. In Holtville? [150]

A. In Holtville, it might have been at his home.

Q. Do you recall what the general substance of your meeting with him was? A. Yes.

Q. What was said?

A. Mr. Herring had told me that—gave me what information he had.

Q. What was that information?

A. The information was that—about the plant, what had taken place down there.

Q. What had taken place, did he say?

A. He told me the situation as far as the York installation was concerned, and the trouble that came from that.

Mr. Petersen: Mr. Examiner, may we ask that the witness not indulge in generalities. He says like this: I discussed the situation, the trouble that came from that, those are all generalities.

Trial Examiner Mouritsen: All right. If you can, Mr. Osborne, give us what was said. In other words, you describe a situation and trouble. The thing is, we want to know as nearly as you can just what Herring said.

The Witness: All right.

Trial Examiner Mouritsen: You don't have to give him the exact words, we don't expect that.

The Witness: Herring said that some of the

(Testimony of H. T. Osborne.)

local boys [151] that worked about the plant at various jobs, and some were detailed to assist the welders in putting in the large tank, and that there had been trouble. I don't recall that he stated who caused it, but there was trouble emanating from some source which I don't recall at the present moment. They wouldn't allow these local boys who were non-union to work with the boys who are union, that had caused considerable trouble and the union had tried to persuade them to join the union. I think it was this local. And that they had had several conferences with them.

Q. With the union? A. With the union.

Q. Whom had the union tried to persuade to join the union?

A. The employees of the Holtville Ice and Cold Storage Company who were helping the welders. In fact,—it developed that all of them had been interviewed by the union.

Q. All of the employees, you mean?

A. That is right.

Q. Of the Holtville Ice and Cold Storage Company? A. That is right.

Q. What else was said, if anything?

A. They were not very much interested in it.

Q. Is that what he said?

A. Yes, they were interested in the set-up that some organization in El Centro had, particularly the Kramer [152] Baking Company.

Q. Is that what he told you? A. Yes.

Q. What did you say to him on that?

(Testimony of H. T. Osborne.)

A. I said that I would tell him about the set-up, advise with him.

Q. What set-up?

A. Let him do whatever he wished to do or any of them, as far as that is concerned. Local association, local employees.

Q. And did you meet any other employees of the company then? A. Yes.

Q. What other ones?

A. I met Mr. Harlan at that time.

Q. Where did you meet him?

A. At his home.

Q. Did you go out to his home to see him?

A. Yes.

Q. Who was present while you were at his home?

A. Mrs. Harlan.

Q. What was said by Mr. Harlan and by yourself on that occasion?

A. Mr. Harlan was not in sympathy with the movement to join the union, and he wanted to know—he said that they had had some discussion about a local association, and [153] wanted to know about it. I explained it to him, told him what they could do.

Q. What did you tell them they could do?

A. They could join anything they chose to join.

Q. What else was said, if anything?

A. That he would take the matter under consideration.

Q. Was that all of that conversation, that you remember? A. Practically all of it.

(Testimony of H. T. Osborne.)

Q. Did you go to see any other employees?

A. Yes. I can't remember their names, there was one man who handled the local trade, I can't remember his name, called at his home.

Q. Was he an employee of the company?

A. Yes. And while there several boys came over there, several of the other boys came over and entered in the discussion.

Q. Employees? A. That is right.

Q. When did that meeting take place?

A. I think the following day.

Q. You can't recall the employees' names?

A. I can't no.

Q. After you had talked to some of these employees, did you go back to Mr. Willard and tell him what you had found out? [154]

A. I didn't talk with Mr. Willard.

Q. What was the general result of your conversation, so far as inquiring into the trouble in the plant?

Mr. Whitelaw: Objected to, it has already been asked and answered.

Trial Examiner Mouritsen: Overrule the objection.

Q. (By Mr. Ryan): What did you find by your investigation?

A. I found there was some coercion on the part of the union with these boys. And I found out also that these men that I talked to were very loyal to Mr. Willard.

(Testimony of H. T. Osborne.)

Q. What do you mean by that, loyal to Mr. Willard?

A. They had worked for him a good many years and they also liked him.

Q. Mr. Osborne, I again show you the transcript of the hearing in this matter which was held in this hotel on September 29, 1942, and direct your attention to page 75, which purports—

Trial Examiner Mouritsen: Is this on the basis of refreshing the witness' recollection?

Mr. Ryan: Yes.

Trial Examiner Mouritsen: Why don't you—

Mr. Ryan (Interrupting): It is on the basis of his statement that he did not report back to Mr. Willard after his investigation.

Trial Examiner Mouritsen: I see. [155]

Q. (By Mr. Ryan): I show you page 75 of the transcript, and direct your attention to the question on line 22, and to your answer following that.

Does that refresh your recollection now that you did report back to Mr. Willard?

A. I met Mr. Willard somewhere, and that is about the extent of it. I talked casually with him; I didn't seek him out.

Trial Examiner Mouritsen: Wait a minute, now. Do you make some differentiation between reporting to him and telling him what you found out in your investigation?

The Witness: Oh, yes. I had no business talking to Mr. Willard. I would involve him and myself, too, if I made it a point to go down and make

(Testimony of H. T. Osborne.)

him a full report. I simply told him his men were loyal to him, that was all, there was no particular discussion about this.

Q. (By Mr. Ryan): Beginning with line 22, on page 75, I put the question to you, "When did you report—then did you report back to Mr. Willard the result of your contacts with employees in the matter"? Your answer: "just in a brief way, yes."

Mr. Whitelaw: We submit that is the same answer he has given now.

Q. (By Mr. Ryan): My question: "What report did you make back to Mr. Willard"? Your answer: "That the men [156] were still loyal to him and wanted to work for him."

Mr. Whitelaw: That is what he says now. What difference is there?

Q. (By Mr. Ryan): Now, did you have occasion to meet with any of the employees, Mr. Osborne, of the Holtville Ice and Cold Storage Company during this time, when you were making this investigation, any group together? A. Yes.

Q. Where was that meeting?

A. At—it was either Mr. Tom Herring's or Mr. Harlan's home.

Q. Who was present at that meeting?

A. There were several of the men.

Q. Employees? A. Of the employees.

Q. What took place at that time?

Mr. Whitelaw: Just a minute. We object, there is no time placed. Was this prior to Mr. Willard

(Testimony of H. T. Osborne.)

coming back from his vacation or after he came back?

Trial Examiner Mouritsen: Try to fix the time, Mr. Ryan.

Q. (By Mr. Ryan): When did this meeting occur, the last one?

A. Well, it was some time in October, I can't remember the exact time. [157]

Q. Would it be in the early part or the latter part?

A. I rather imagine it might have been around the 8th or 10th, I can't recall the exact time.

Q. Over how long a period had you been contacting these employees after your talk with Mr. Willard at his office, when he called you there?

A. I imagine a couple of weeks.

Q. And toward the latter part of that time you met with his man Harlan and some other employees at his home, or the home of Tom Herring?

A. That is right, I can't remember.

Q. What took place at this meeting?

A. They had gone into this matter of a local association, and decided that is what they wanted to do. They wanted my advice.

Q. What did you advise them?

A. That they should do whatever they wanted to. If they wanted to organize, they could.

Q. Did you do anything to assist them in getting information on how to organize?

A. They asked for that. And I explained the procedure.

(Testimony of H. T. Osborne.)

Q. Who asked for it?

A. I can't recall which one.

Q. What did you do to assist them?

A. I explained the procedure. [158]

Q. What did you say in that regard?

A. That they should have a temporary chairman and a temporary secretary, and start from there; keep minutes.

Q. Did you tell them about by-laws and constitution?

A. Yes, they had those. They had studied those.

Q. Where did they obtain them?

A. I had shown them a copy of the form used by several organizations here, and originally drafted by Mr. Whitelaw.

Q. The attorney in this case?

A. Yes, and they had been in Mr. Whitelaw's office and had adapted them to their needs apparently.

Q. Where had you gotten the copies that had been drafted by Mr. Whitelaw?

A. You mean the originals?

Q. Yes.

A. Well, I had gotten them from him.

Q. And you turned them over to them for their use, is that right?

A. I let them look at it, I didn't let them have it, they got their copies from Mr. Whitelaw.

Q. Who told them they might get their copies from Mr. Whitelaw?

(Testimony of H. T. Osborne.)

A. I told them any legal advice they wanted, if they were interested, to go to Mr. Whitelaw, the man that drafted these; they apparently did, they so informed me. [159]

Q. Mr. Whitelaw, was he at that time connected with the Associated Farmers?

A. Yes, he was at the time.

Q. Did you give them any advice on how to proceed to elect officers? A. I did.

Q. What did you advise them in that regard?

A. I advised them to—as I said before—start with a temporary chairman, temporary secretary, and then proceed to elect a permanent chairman and permanent secretary, and follow the by-laws in detail, which they did. They elected their officers in that way.

Q. Did you give them any advice on the preparation in the keeping of minutes of the meetings?

A. I did.

Q. How did you explain that to them?

A. That it was necessary, if they had meetings, to have minutes of those meetings, keep them in their own way.

Q. How many meetings did you attend? You have already told us about this one. A. One.

Q. The Association then did come into existence about that time?

A. They formed, according to the by-laws, a bargaining committee, I think there were three.

[160]

Q. Three members?

(Testimony of H. T. Osborne.)

A. Three members. And they presented their proposition to Mr. Willard as to hours, wages and working conditions. And they presented them to him in writing, and he returned his answer to them. And then they called me to visit Mr. Willard.

Q. Who called you?

A. The Association. I think Mr. Harlan. Would I go into a conference with Mr. Willard on this matter of wages and hours and working conditions.

Q. Did you? A. I did.

Q. When you met with Mr. Willard, was the committee for the Association there also?

A. They were.

Q. When did that meeting occur, approximately?

A. Oh, some days after they were organized.

Q. Well, was that in the month of October also?

A. I don't recall, it was some time later, might have been, might have been the early part of November.

Q. It is indicated that the contract became effective November 1, 1941. Would it have been around that time? A. Around that time.

Q. Did you take part in the negotiations while you were present that day? [161] A. Yes.

Q. With respect to wages and hours?

A. Yes.

Trial Examiner Mouritsen: Who were you representing there, Mr. Osborne, the Association?

The Witness: The Association. [162]

(Testimony of H. T. Osborne.)

Q. (By Mr. Ryan): Mr. Osborne, did you advise these employees that they might go to Mr. Whitelaw for advice regarding the setting up of an association of employees?

A. Why, I think it was the second trip I made over there.

Q. That was when you began your investigation, after you had talked to Mr.—— A. Yes.

Q. ——Willard in his office?

A. That is right.

Q. It would have been within a few days after that? A. That is right.

Q. Did you have occasion to contact Mr. Whitelaw during that time then to advise him they might contact him?

A. I don't think so, I don't recall. [166]

HERMAN T. POOL

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please, Mr. Pool? A. Herman T. Pool.

Q. What is your address?

A. Route 3, Holtville.

Q. Were you ever employed, Mr. Pool, by Holtville Ice and Cold Storage Company?

A. Yes, sir.

(Testimony of Herman T. Pool.)

Q. When were you first employed by that company? A. I worked a while in '29.

Q. 1929? A. Yes, sir.

Q. How long did you work on that occasion?

A. Possibly six weeks. [171]

Q. In what capacity?

A. In the cold storage.

Q. And did you work for the company at any other time? A. Yes, again in '31 or '32.

Q. And how long did you work for the company at that time? A. Possibly a month.

Q. Did you work for them any other time?

A. No,—I started again in December of '35.

Q. How long did you continue in the employ of the company at that time?

A. Until the 1st of October in 1941.

Q. When you began in 1935 to work for the company, what was your job?

A. I was relief storeroom man and ice puller.

Q. How long did you continue on that particular job as relief storeroom man and ice puller?

A. Possibly a year.

Q. What was your salary when you began on that job, or your wage?

A. Sixty cents per hour.

Q. Did it continue at that rate while you remained on that job? A. Yes, sir.

Q. Did you say you stayed on that job about one year? A. Yes. [172]

Q. What did you do after that?

A. I went on as a regular ice puller.

(Testimony of Herman T. Pool.)

Q. How long did you continue as a regular ice puller?

A. In July of '38 or '39, I don't recall which.

Q. What wage did you receive when you began as a regular ice puller, if you remember?

A. At the time I started I think it was sixty cents per hour.

Q. Did you continue on that wage during your——

A. It later changed to \$117 per month.

Q. While you were still an ice puller?

A. Yes.

Q. What were you receiving at the end of your term as a regular ice puller?

A. The same wage, \$117 per month.

Q. After that what did you do?

A. I was made relief operator, in the engine room.

Q. And how long did you continue as a relief operator in the engine room?

A. Possibly 18 months.

Q. Was that what you were doing when you left the employ of the company?

A. No, I was running regular shift.

Q. What do you mean by that?

A. One of the operators had quit and that throwed me on [173] one of the regular shifts.

Q. You were a regular operator, you mean?

A. Yes, that throwed me to work at nights.

Q. When did you begin on that job as a full-fledged operator?

(Testimony of Herman T. Pool.)

A. It was in the fall of '40 or spring of '41, I don't remember which.

Q. First of all, what wage did you receive as an operator? A. \$125 per month.

Q. What were your duties as an operator?

A. I had to take readings, make the log sheet out, keep the Diesel engines oiled, see they had plenty of water, oil the icing machines, keep the temperature of the tanks down.

Q. Had you had any previous experience as an engineer, or knowledge of engineering?

A. Not until I went into the plant, no.

Q. Had you ever taken any courses in engineering in school? A. No, sir.

Q. During your period of employment, from December, 1935, when you say you began on this last period of employment, with the company, until your employment terminated in the fall of 1941, will you tell us whether or not there were periods in any of those years when you were laid off for slack of business or for any reason?

A. Yes; the first couple of years I was laid off for slack [174] business during the summer.

Q. During the summer months? A. Yes.

Q. For how long, approximately?

A. I think one was six weeks and the other about thirty days.

Q. On the occasion of your lay-off then, how did you get back to work after the lay-off, would you be notified, or how would you get back to work?

(Testimony of Herman T. Pool.)

A. When we were laid off the superintendent usually told us about when they figured on starting again. Maybe we would drop back by the plant in a few days before that date and see, or maybe we would strike him up in town and he would notify us.

Q. Now, after the first two years when you say these lay-offs occurred in the summer, did you work straight through after that, or just how did you do it?

A. Well, as I recollect we worked straight through and had a two weeks' vacation each summer.

Q. That began about what year?

A. I usually had mine the first of October.

Q. When did you begin working straight through and having a vacation for a couple of weeks, what year did that begin? A. That was '38.

Q. And in the year of 1941, how did you work that year? [175] Did you work the entire year up to the time you were laid off, or just how did you do that?

A. Yes, sir; I worked the entire time.

Q. And when did you say you were laid off, your employment was terminated I mean?

A. I went on my vacation the 1st of October in '41, and I never did get to go back to work.

Q. When you went on your vacation did you have a conversation with any representative of the company about going on your vacation?

A. The superintendent informed me that—a day

(Testimony of Herman T. Pool.)

or two before I would go on my vacation the 1st of October.

Q. Was there a set time to take vacations? I mean, was it for one week, two weeks or a month, or how long?

A. You mean how long we was to take?

Q. Yes. A. Two weeks.

Q. Now, Mr. Pool, did you ever have occasion to join a labor organization while you were employed by the Holtville Ice and Cold Storage Company?

A. Not up until '41, when I joined then.

Q. You did join then? A. Yes, sir.

Q. When in 1941 did you join the labor organization?

A. The last of September, around the 26th or 27th. [176]

Q. And what organization did you join on that occasion? A. The A. F. of L.

Q. What branch, what part of the A. F. of L.?

A. I was going as the operating engineer division.

Q. Pardon?

A. I was going in the operating engineers.

Q. Is that what you joined?

A. Yes, I joined—after I didn't go back to work I went ahead and paid off the money in the regular truck union.

Q. In the Teamsters Union? A. Yes, sir.

Q. Will you tell us the circumstances leading up to your joining the union the latter part of Septem-

(Testimony of Herman T. Pool.)

ber, 1941, how it came about you joined the union on that occasion?

A. Well, there was quite a bit of contract work going on at the plant, all receiving good wages.

Q. What do you mean by that, will you explain what you mean by contract work that was going on?

A. Well, the York Icing Machine people was putting in a new can tank in the plant and the contractor was putting in some new posts in the storeroom.

Q. Go ahead and explain it further.

A. Well, the man that was working on the tank, they refused to use any of the fellows around the plant that wasn't union, said they had to bring in their helpers from L. A., so a [177] bunch of the fellows got to talking if they would go union they would get on the work, get the good wages.

Q. This contract job, you mean?

A. Yes, sir.

Q. So what happened then?

A. Well, I knew some of the fellows that was working on the carpenter gang that I used to work with in the storeroom. One of them asked me how about them joining in the union.

Mr. Whitelaw: We object, it is purely hearsay.

Trial Examiner Mouritsen: All right. I think it isn't very material.

Mr. Whitelaw: I know, it is hearsay.

Mr. Petersen: Certainly not hearsay, Mr. Examiner. It is not hearsay if some of the fellows he knew told him something. He is testifying on direct

(Testimony of Herman T. Pool.)

testimony what somebody told him, that is not hearsay.

Mr. Smith: It would be hearsay as to——

Trial Examiner Mouritsen: Go ahead and answer the question.

A. As I say, some of the fellows I knew asked me how about joining in the union.

Mr. Smith: I couldn't understand what the witness said.

Trial Examiner Mouritsen: Read the answer.

(The answer was read.)

Mr. Whitelaw: I think that is hearsay. [178]

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Ryan): You may proceed and give us——

A. I told him I would think it over. So the next day he brought me over some applications to fill out if I wanted to come into the union.

Q. One of the union men on the contract job?

A. Yes, sir.

Q. What did you do?

A. Well, there was a bunch of the fellows got together during that lunch hour and was talking it over.

Q. A bunch of the fellows?

A. Fellows working in the plant.

Q. Employees of the company?

A. Yes, sir.

Q. Holtville Ice and Cold Storage Company?

A. Yes, sir.

(Testimony of Herman T. Pool.)

Q. Go ahead, and tell us what occurred.

A. That evening there was a union man by, organizer, invited us over to the hall that night.

Q. Over to the union hall?

A. Yes, sir, here at El Centro.

Q. And what did you do then?

A. Well, the majority of the fellows decided to come over.

Q. Did you come over to the union hall that night? [179]

A. Yes.

Q. Over here in El Centro?

A. Yes.

Q. The American Federation of Labor Union Hall, you mean?

A. Yes.

Q. Did anyone else come besides you?

A. Yes, sir.

Q. Who did come?

A. Henry Fredenburg was one, Lester Hart, Henry Miller, Tom Herring, Bailey Pool, Perry Blankenship and Pete Drinkard. I think that was all that come that night.

Q. When you got to the union hall was anyone else present at the union hall?

A. Of us fellows that worked at the plant?

Q. Yes.

A. No, sir, we all come over in cars, two cars.

Q. Did you all come together at the same time, I mean?

A. Yes, sir.

Q. When you arrived at the hall, what did you do?

A. Well, we went up into the hall and into the Labor Hall and took a seat.

(Testimony of Herman T. Pool.)

Q. What else did you do after you got up there?

A. Well, they discussed about going into the union.

Q. Was there any union officials present?

A. Yes, sir. [180]

Q. Who was present on behalf of the union?

A. Ken Lloyd.

Q. What branch of the A. F. of L. did he represent, do you know?

A. I couldn't state for certain what branch.

Q. Do you know whether he was a Teamster representative?

A. I suppose he was a Teamster.

Q. (By Trial Examiner Mouritsen): You don't know, is that right?

A. I don't know, for certain.

Q. (By Mr. Ryan): What did you do then there besides talk about the union, as I understood you to say you did?

A. Some of the fellows asked him if they went into the union what protection they could get, maybe the company officials of the Holtville Ice wouldn't go for it. They said we would just have to take a chance on getting that over.

Q. Did you proceed to join the union there?

A. Yes.

Mr. Smith: That is objected to as calling for the opinion and conclusion of the witness.

Trial Examiner Mouritsen: Yes. Tell us what you did.

(Testimony of Herman T. Pool.)

Q. (By Mr. Ryan): Tell us what you did in that regard, tell us what happened at the union hall. What did you do after you got up there? [181]

A. We took a vote among ourselves to see whether to join in that night or not. The majority agreed to join. We all signed in, made application to go into the union.

Q. Did you sign up something there at the union hall?

A. I made an application to become a member.

Q. Do you know whether the others did or not, who were present?

A. They all made applications, as far as I know.

Q. Did you see them make them out?

A. They was writing on them.

Q. Did you, thereafter, make any payment to the union? A. Yes, sir.

Trial Examiner Mouritsen: What does that matter?

Mr. Ryan: It doesn't make any difference, just indicating he went on through with it.

Q. (By Mr. Ryan): Did you have any conversations thereafter, with your brother, Pete Pool, after that night at the union hall? A. Yes, sir.

Q. When did you next have a conversation with him?

A. I couldn't be exact, but I think it was the next day.

Q. Who is Pete Pool?

A. He is my brother, superintendent of the Holtville Ice.

(Testimony of Herman T. Pool.)

Q. Where did you have a conversation with him?

A. At the plant. [182]

Q. And was anyone else present?

A. I don't think so.

Q. Where were you at the time you had this conversation with your brother?

A. In the engine room.

Q. Were you working at the time? Was that your working period?

A. No, I think I just dropped by the plant to clean up that day.

Q. Will you tell us what conversation there was, what you said and what your brother said?

Mr. Whitelaw: I think that is absolutely hearsay so far as the respondents Hugh T. Osborne and Associated Farmers are concerned, rankest, purest kind of hearsay.

Trial Examiner Mouritsen: As I understand the testimony of the witness the man, Pete Pool, is the superintendent out there.

Mr. Whitelaw: That is nothing to Associated Farmers.

Trial Examiner Mouritsen: There is some connection between Mr. Willard of the respondent Ice Company and Mr. Osborne of the Associated Farmers.

Mr. Whitelaw: Not a prima facie case established yet by any manner of means.

Trial Examiner Mouritsen: I will permit him to go forward. [183]

(Testimony of Herman T. Pool.)

Q. (By Mr. Ryan): You may answer the question.

A. Well, I don't recollect just exactly how the investigation started, but I informed him I had signed into the union the night before, so he told me he didn't think it was a very good idea, that Mr. Willard could get plenty of non-union men to operate his plant. I told him, well, we would just have to wait and see.

Q. Was anything further said on that occasion?

A. We probably had more conversation, but I don't recollect it. [184]

Q. Now, after this conversation that you have just testified about, that you had with your brother Pete Pool, did you have any conversation thereafter with your brother? A. Yes, sir.

Q. When did you next have a conversation with him?

A. Well, I was on my vacation. He came out to my place, he had his horses out in my corral; he come out every day to feed them.

Q. At the time you made application to become a member of the union, were you on your vacation then, or when did your vacation begin?

A. Well, my vacation begin after I made application.

Q. At the time you had your first conversation with Pete Pool that you have just testified about, were you then on your vacation or was that afterward?

(Testimony of Herman T. Pool.)

A. No, I was still on the job. I hadn't been on my vacation.

Q. When did you go on your vacation, approximately? A. First of October.

Q. And how long were you on your vacation when you had this conversation with your brother, Pete Pool?

A. It was about the 8th or 9th of October.

Q. This occurred at your home, did it not?

A. Yes, sir. [185]

Q. Was anyone else present, other than you and Mr. Pete Pool?

A. Not in hearing distance, no.

Q. Tell us what conversation you had on that occasion. [186]

Q. (By Mr. Ryan): Will you tell us what Pete Pool said to you and what you said to him in this conversation that occurred at your house, that you started to tell us about?

A. Well, my brother informed me that Mr. Willard had informed him that there would be no relations working at the plant. He sort of laughed when he told me that. He said, "I guess you will be out hunting you another job." I told him, "Well, I was hunting one when I found that one."

Q. Did you have any more conversation with him on that occasion? A. No, I guess not.

Q. Thereafter did you have occasion to have conversation with your brother again?

A. Yes, I did.

Q. When was the next conversation?

(Testimony of Herman T. Pool.)

A. Well, it might have been two or three days or maybe longer.

Q. Where did that conversation take place?

A. Out at my place.

Q. Your brother was at your place again, was he?

A. Yes, sir. If I might explain why he was there so much, he kept his horses in my corral, that is the reason why he would be there.

Q. Who was present at that time when you had your conversa- [187] tion with your brother Pete Pool? A. No one.

Q. What was said by Mr. Pete Pool and what was said by yourself?

Mr. Whitelaw: To which we object as being hearsay on behalf of the respondents Associated Farmers and Hugh T. Osborne.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: Well, sort of laughed, he said, "Well, are you still with the union?" I told him, sure, I was going to ride it through. He said, "You are just riding a blank train."

Q. (By Mr. Ryan): Was there any further conversation than what you have already testified to? Was that all you said at that conversation?

A. As far as I remember, yes.

Q. Is that all your brother said? A. Yes.

Mr. Whitelaw: I ask to have it stricken on the ground it is hearsay, and on the further ground it is incompetent, irrelevant and immaterial, and an expression of an individual, and not binding upon any of the parties in response to this action.

(Testimony of Herman T. Pool.)

Trial Examiner Mouritsen: I will deny the motion. [188]

Q. (By Mr. Ryan): Do you know Mr. Hugh T. Osborne? A. Well, yes and no.

Q. Have you ever met him? A. Once.

Q. When was that occasion that you met Mr. Osborne?

A. Well, he come to my home around the first week in October, '41.

Q. What time of day was it?

A. About dusk dark.

Q. About dark? A. Yes.

Q. Will you tell us just what occurred on that occasion? Did you have a conversation with him?

A. Yes, sir, I did.

Q. Was anyone present, Mr. Pool?

A. Yes, my wife was sitting on the front porch.

Q. Where did the conversation take place at your home? A. At the yard gate.

Q. Could you tell us what Mr. Osborne said to you on that occasion?

A. Yes. He was there when I drove in the driveway. I got out of the car, he shook hands with me, and introduced himself as Hugh T. Osborne. He said, "I guess you have heard of me, I was connected with the Associated Farmers." I told him I had heard of him. [189]

Q. What else was said?

A. The first thing he said after that was: "I am not going to let you bring the union into the Valley." I didn't exactly get what he was getting

(Testimony of Herman T. Pool.)

at when he first said it. So I told him that I wasn't bringing it in, it was already here.

Q. Was that the entire conversation?

A. No.

Q. Go ahead and tell us the entire conversation. What he said and what you said.

A. Well, he wanted to know what our differences was down there. I told him we would like to get a better wage. He asked me did I ask Mr. Willard for more money. I told him no, Mr. Willard hadn't been around much, I had no opportunity to ask him. He asked then why was we dissatisfied with our wages, and I explained to him about the fellows working on the contract jobs, drawing good money, making around \$250 a month, double our wages. He said, "Maybe the reason they got it, they only worked six months a year." I told him I would gladly work six months a year and take the other six months off, rather than work twelve for half that. He told about he and some other fellows going to a lettuce shed that was having some trouble run by a fellow named Godfrey. They made him line up some differences. I said, "Wasn't that like a union, going in a body?" He said, [190] "No, we went as American citizens." He went on to tell me about one fellow somewhere on the Coast who had asked to see the union books and they hit him over the head, and that was the last he ever wanted to see of them.

Q. Did he say anything else?

A. Yes, he told me, he said, "If you are not too

(Testimony of Herman T. Pool.)

far in, think it over and back out." I told him I would think about it.

Q. Did you hold any position with the union after you had applied for membership in it? Speaking now of the A. F. of L.

A. Hold any position with the union?

Q. Yes.

A. Well, I was elected shop steward by the fellows in the Holtville Ice.

Mr. Smith: Just a minute. I move that answer be stricken for the purpose of permitting an objection.

Trial Examiner Mouritsen: Why don't you move to strike it and then——

Mr. Smith: I move to strike the answer then for the purpose of making an objection. Move to strike the answer as a conclusion.

Trial Examiner Mouritsen: I will deny the motion. Although I would be interested in the time this occurred, Mr. Ryan. [191]

Q. (By Mr. Ryan): When were you selected as shop steward for the employees of the Holtville Ice and Cold Storage Company?

A. It was either the first or second meeting.

Q. Of what? A. At the union hall.

Q. And when you have reference to the meetings, when did the first meeting take place?

A. About the 26th or 27th of September, in '41.

Q. When did the second one take place?

A. About a week later.

(Testimony of Herman T. Pool.)

Trial Examiner Mouritsen: Was the second one after you started your vacation?

The Witness: Yes, sir.

Trial Examiner Mouritsen: Can you fix the time when you were elected with reference to the 1st of October, that is, when you started your vacation, was it before or after?

The Witness: That I do not know.

Q. At the time you were on your vacation, were you a shop steward for the union?

A. Yes, sir.

Mr. Smith: Mr. Examiner, I didn't make myself clear. As I understood the witness, he was elected to shop steward. There hasn't been any election testified to, no showing there was ever a majority of the employees attended any meeting [192] for the purpose of electing anyone to anything; it is a conclusion of the witness, electing him a shop steward.

Trial Examiner Mouritsen: As I understand it, he said the number of the men at the meeting of the 26th or 27th, he is not sure whether it was that meeting or the next one he was elected; it wouldn't be necessary for them to have a majority.

Mr. Smith: He has only testified to six or seven that ever even signed applications. There is no showing they ever became members.

Trial Examiner Mouritsen: He says they selected him as shop steward.

Mr. Whitelaw: Who selected him?

Mr. Yeager: Who selected him?

(Testimony of Herman T. Pool.)

Q. (By Mr. Ryan): Who selected you as shop steward, or elected you?

A. The fellows at the Holtville Ice and Cold Storage.

Q. Was it held at the Ice and Cold Storage plant, or where was it?

A. They took the vote at the union hall the night we was there. They wrote the names on papers and dropped them in a hat; no one seen who the other fellow was voting for.

Mr. Ryan: I have no further questions.

Cross Examination

Q. (By Mr. Smith): Mr. Pool, how many employees of the [193] Ice Company were present when they voted?

Mr. Petersen: Mr. Examiner, I request that Mr. Pool be given a list of the employees to see which ones were present, inasmuch as the other witnesses——

Trial Examiner Mouritsen: I will let him answer as far as he can from his unaided memory. If he wants any help or anyone wants to refresh his recollection from that, I will let them do it.

A. I think there was ten present.

Q. (By Mr. Smith): And can you tell who they were?

A. G. P. Drinkard, Lester Hart, H. G. Miller, Bailey Pool, Perry Blankenship, Tom Herring, Henry Fredenburg. Is M. K. Stout on the list?

Q. Stout? A. M. K. Stout, yes.

Q. I had not put him down before.

(Testimony of Herman T. Pool.)

A. And myself.

Q. That is nine. Who is Bailey Pool?

A. One of my brothers.

Q. Now, you say that was the second time you went to the union hall that took place?

A. No, sir, the first time.

Q. The first time. Was that the night that you signed an application card?

A. Yes, sir. [193-A]

Q. And did you see what G. P. Drinkard signed?

A. Well, they give him an application card, whether he signed it or not, I couldn't swear to that, no.

Q. Would that be true of all the rest of them, they gave them all cards but you couldn't swear whether they signed them or not?

A. No, there was two or three of them I seen sign them.

Q. So you are only positive of about two or three of them? A. Yes.

Q. Which two or three are you positive about?

A. I seen Lester Hart sign his and Perry Blankenship and Miller? [193-B]

Q. (By Mr. Smith): Were you notified by anyone you were accepted at that time?

Mr. Ryan: Object to that as immaterial.

Q. (By Mr. Smith): You were not, in fact, a member of any union at that time, were you, Mr. Pool?

(Testimony of Herman T. Pool.)

A. Not until I signed an application. I made application to become a member.

Q. What did you do with that application after you signed it?

A. I give it to the union man, Mr. Ken Lloyd.

Q. You are sure these other three men turned theirs in, also? A. Yes.

Q. You are not sure of the others?

A. They turned them in, yes, sir.

Q. All of them, or just the three you are sure of?

A. No, I am sure they all turned their applications in, whether they signed them or not.

Q. You didn't see whether they signed them or not? A. No.

Q. How many men voted when you say you were elected steward? A. They all voted.

Q. Were there nine ballots cast?

A. Yes, I suppose there was; they all voted.

[194]

Q. Was anybody else elected to anything else?

A. No, sir.

Q. That was the only office they filled, was it?

A. Yes, sir.

Q. And how many employees were there at the Holtville Ice Company at that time, do you know, approximately? A. About 14 or 15.

Q. And that 14 or 15 was just a skeleton crew that was kept on in summer, was it not?

A. I suppose it was, yes.

(Testimony of Herman T. Pool.)

Q. In other words, when you were in the height of the carrot season you probably had over 20 men?

A. Yes, sir.

Q. Is it not true each year as the carrot season was finished some men were laid off each summer?

A. Yes, the extra men that was put on during the winter was laid off in the summer.

Q. Well now, are you sure that you hadn't been laid off the summer before for a while?

A. I don't think I was, no.

Q. That would be the summer of 1940.

A. I don't think I had a layoff, I remember two weeks vacation.

Q. Are you sure about the year 1939?

A. No, I don't think I was laid off in '39. [195]

Q. How about your brother, Bailey Pool?

Mr. Petersen: To which we object on the ground it is hearsay and entirely irrelevant.

Trial Examiner Mouritsen: I will overrule the objection. I think your question could be a little more specific.

Q. (By Mr. Smith): Was your brother, Bailey Pool, an employee of the Holtville Ice Company at the time of the meeting up in the union hall?

A. No, he was off at the time.

Q. Well, how long had he been off then?

A. That I cannot recall.

Q. He is one of those that voted to make you the shop steward?

A. I don't know who voted for me.

Q. Do you know how many votes you received?

(Testimony of Herman T. Pool.)

A. Five or six, I don't recall exactly.

Q. Well now, when you started to take your vacation, Mr. Pool, were you not told that you would be laid off for a while? A. No, sir.

Q. Didn't they lay you off on October 1st, but paid you your wages until the middle of the month?

Mr. Petersen: To which we object. The witness has already testified he went on his vacation October 1st, and I don't like the line of questioning that he was laid off [196] on October 1st and they paid him his wages.

Trial Examiner Mouritsen: I will overrule the objection. The witness, I think, understands the question.

Q. (By Mr. Smith): Who did you have a conversation with——

Trial Examiner Mouritsen: Let him answer the first one.

Read the question.

(The question was read.)

The Witness: No, I received one week's wages from the first of October until the night of the 15th of October.

Q. (By Mr. Smith): Well, isn't it true that the ice company had only given one week's vacation on pay as a vacation, up until that time, as far as you know?

A. Yes, we have always had one week with pay and one week without pay.

Q. Well now, on October 1st, at the time you

(Testimony of Herman T. Pool.)

stopped working, did you have a conversation with Pete Pool or anyone connected with the plant, about taking your vacation?

A. Well, he informed me a day or two before-hand I was to start my vacation the first of October.

Q. Who informed you that?

A. Pete Pool, the superintendent.

Q. And did he say anything to you then that because of the change-over from Diesel to electric power that you might be laid off?

A. Not that I recall, no. [197]

Q. You know that the plant had changed its power during the summer, did you not?

A. Yes, sir.

Q. You assisted in the change-over from the Diesel engines to the electric, did you not?

A. Well, in a way, yes. I worked in the plant, taking out material.

Q. What kind of work had you been doing, Mr. Pool, from the time you stopped manufacturing vegetable ice in June, until October 1st?

A. What kind of work?

Q. Yes.

Trial Examiner Mouritsen: In the summer of 1941?

Mr. Smith: Yes, after the end of the carrot shipping season.

The Witness: I helped clean the cooling tower up, cleaned the wires up, used a cutting torch taking out water and oil lines, tearing out stuff that had to come out.

(Testimony of Herman T. Pool.)

Q. (By Mr. Smith): And did you finish whatever job you were on by about the time you started taking your vacation? A. No, I didn't.

Q. What work were you doing just prior to your vacation?

A. Helping overhaul an icing machine.

Q. Had that work not been completed by October 1st? A. It had not, no, sir. [198]

Q. Who was working on it besides you?

A. One York machinery man by the name of Harry Grumble and M. K. Stout.

Q. You say M. K. Stout is one of those that signed an application card and voted that night?

A. Yes, sir.

Q. He is still over there, isn't he?

A. Yes, sir.

Q. He was there before you were, wasn't he?

A. Yes, some time, I don't know just how long.

Q. Well, Mr. Pool, as I understand your work had been mostly completed with the engine room?

[199]

Q. (By Mr. Smith): For approximately two years prior to October 1941, had it not?

A. Yes, sir.

Q. That is, you were a Diesel engine operator?

A. Yes.

Q. Was it not common talk among you Diesel engine operators since the plant had changed over to electricity that probably some of you would be forced out?

Mr. Petersen: Object to that. Common talk

(Testimony of Herman T. Pool.)

among the operators would be purely and entirely hearsay.

Trial Examiner Mouritsen: Overrule the objection. Answer the question.

The Witness: Yes, there was talk there would be some men let out.

Q. (By Mr. Smith): In other words, you knew it wouldn't require Diesel engine operators when they had power?

Mr. Petersen: Same objection, Mr. Examiner, because he says he knew.

Mr. Ryan: I would like the question read.

(The question was read.)

Q. (By Mr. Smith): Would not require Diesel engine operators when they used the electric power?

A. Knew they were taking the Diesels out, we know there [200] wouldn't be any use for a Diesel operator when they didn't have any Diesels to operate.

Q. You never did have a conversation with Mr. Willard did you, Mr. Pool, about ceasing your employment, or coming back to work, or anything else?

A. No, sir, I did not.

Q. He never said anything to you and you never said anything to him? A. No.

Trial Examiner Mouritsen: A conversation with Mr. Willard?

Mr. Smith: Yes.

Q. (By Mr. Smith): The only one you ever

(Testimony of Herman T. Pool.)

talked with concerning your employment was your brother Pete?

A. He was superintendent, he was the man that hired us and fired us.

Q. Did Pete ever tell you on more than one occasion there was criticism that he was giving you, because you were his brother, more overtime work than he was some of the others and there was some kick about it?

A. He never told me anything like that at no time.

Q. He never did? A. No.

Q. He did tell you once that Mr. Willard told him it was a company policy that a foreman or superintendent should not [201] employ a relative?

A. He told me that when I was on my vacation, the only time.

Q. The first time you had ever heard of that?

A. Yes.

Q. Had he, as a matter of fact, Mr. Pool, given you more overtime than he had the other operators?

A. Not that I know of, no.

Q. No one ever told you that he was accused of favoring you because you were his brother?

A. No, sir.

Mr. Smith: That is all.

Cross Examination [202]

Q. (By Mr. Yeager): Mr. Pool, at this conversation you had with Mr. Osborne you have related substantially everything [211] that was said by you

(Testimony of Herman T. Pool.)

and by Mr. Osborne at that conversation, have you, as well as you can remember it?

A. Yes, as well as I can remember it.

Q. Was there any conversation concerning employees union, or just what you have already testified?

A. No, he didn't offer no employees union.

Q. He didn't say anything about it?

A. No.

Mr. Yeager: That is all.

Q. (By Mr. Petersen): Now, you stated you had worked for a period of about four years continuous since 1935 at another job than in the engine room, is that substantially right?

A. Yes, I started in in cool storage and ice tank.

Q. When you were told that you were being laid off, were you asked whether you were willing to go back to the ice tank or the cold storage room?

A. No, sir, I was not asked.

Q. Did you have seniority over some of the employees?

Mr. Petersen: I will herewith hand the witness a copy of Respondent's 1-A for his benefit so he can——

Trial Examiner Mouritsen: Don't hand him a copy. Get the original.

Mr. Petersen: All right.

Q. (By Mr. Petersen): Now, of the men who were in the can department on Respondent's 1-A, had Mr. Harlan worked there [212] longer than you had at the plant, the last time you were there?

(Testimony of Herman T. Pool.)

A. No, sir.

Q. Had Mr. Hogue worked there longer than you had? A. No, sir.

Q. Had Mr. Fruhn worked there longer than you had? A. Yes, sir.

Q. Had Mr. Standifer worked there longer than you had? A. No, sir.

Q. Had Mr. Blankenship worked there longer or as long as you had?

A. No, sir, he hadn't.

Q. Those are the men in the can pullers department. In the store room had Mr. Gettle worked there longer than you? A. No.

Q. Had Mr. Ireland worked there as long or longer than you? A. No, he hadn't.

Q. Had Mr. Morgan worked there as long or longer than you? A. No, sir.

Q. Mr. Harlan? A. No, sir.

Q. And Mr. B. Pool? A. No, he hadn't.

Q. And Mr. Hefner? [213] A. No, sir.

Q. You had worked in the can pulling and in the store room previous to becoming an engineer?

A. Yes, sir.

Q. Then this list of men who were put on in the can pulling and the store room departments, Mr. Fruhn was the only one that had any seniority in the plant over you?

A. Mr. Fruhn was not kept on, if I might state.

Q. He wasn't kept on, either?

A. No, sir.

(Testimony of Herman T. Pool.)

Q. He was the only one that had seniority over you?
A. Yes, sir.

Mr. Smith: You didn't call the engine room.

Mr. Petersen: No, the engine room was being dispensed with, that is why I didn't go into that. It was just to show they could step down to a job just as well as being built up to the job.

May the witness have 1-B

Q. (By Mr. Petersen): Mr. Stout, you testified he worked there longer than you previously?

A. Yes, sir, he had.

Q. Did Mr. Harlan work there longer than you?

A. No, sir.

Q. Mr. Hogue? A. No, sir. [214]

Q. Or Mr. Gettle? A. No, sir.

Q. Or Mr. Ireland? A. No, sir.

Q. Mr. Morgan? A. No, sir.

Q. Mr. O'Neal?

A. I don't know whether O'Neal—there is a son and a father. The father had worked there at one time before I had.

Q. He was still working there in 1941 or '42.

A. No.

Q. Mr. Stephens?

A. I don't know the gentleman.

Q. Mr. Stewart? A. I don't know him.

Q. On the platform and delivery, Mr. S. Harlan?

A. I had been there longer than he had.

Q. Mr. Drinkard?

A. He had seniority over me.

(Testimony of Herman T. Pool.)

Q. He had seniority over you. Mr. Faulkner?

A. I had been there longer than he had.

Q. Mr. Hefner?

A. I had been there longer than he had.

Q. Then according to this list there were only two men on Respondent's Exhibit 1-B? [215]

Trial Examiner Mouritsen: You don't need to summarize, Mr. Petersen, we listened to what he said before.

Q. (By Mr. Petersen): Now, you have stated that your pay as a can puller or store room man, whichever it was, was \$117 a month, is that right?

A. The last part of the time I worked on the tank was \$117 per month or \$117.50, I don't recollect just which.

Q. How many hours did you work?

A. I worked 8 hours a day.

Q. How many days a week?

Trial Examiner Mouritsen: That is as a can puller?

Mr. Petersen: As a can puller and in the store room.

A. I worked six days a week part of the time and it was cut. I don't remember whether I was still on the tank or not when it was cut to five days per week.

Q. Were your wages kept the same when you were cut to five days as they were when you worked six days?

A. Yes, I guess they was kept the same.

Q. Kept the same. Now, you were asked a

(Testimony of Herman T. Pool.)

question about whether you saw Mr. Willard. To get back to the work, did you see Mr. Willard to get back to work this year after you were laid off by your brother, Pete Pool? A. No, sir, I didn't.

Q. Did you on other years go to see Mr. Willard before you went back to work after you were laid off, if there was [216]a lay-off? A. No, sir.

Q. Who did you see during those years to get back to work?

A. We always seen the superintendent.

Q. Did the superintendent generally notify you about the time they were ready to start?

A. Yes, sir.

Q. And did you then go down to the plant to see what was doing down there?

A. Yes, sir, sometimes we would go down, maybe a week early, something like that, drop around and see if they had changed their plans or anything, maybe start sooner or put it off longer.

Q. Has it been a general practice in the six years you worked continuously at the plant the last time that you knew when you were going back to work in the fall of the year?

A. You mean did we know for certain when we were going back?

Q. Yes.

A. Well, we always figured on going back, tell us maybe we would be off a month and come back at certain dates.

Q. Were you ever told in years prior to 1941 that you weren't coming back? A. No, sir.

(Testimony of Herman T. Pool.)

Q. When these lay-off seasons started at the close of the—whatever it is—carrot season, when the carrot season [217] closed and the repairs were over, were you then told you could come back or you couldn't come back to work?

A. They would tell us we would come back when production started up again.

Q. Now, it has been brought out there was complaint concerning your brother favoring you on certain kinds of work down there. Did you stand a relief shift the same as the other 3 regular engineers down there? A. Yes.

Q. Were you responsible for the operation during your shift? A. Yes, sir.

Q. When was your brother hired by the Holtville Ice Company, your brother Pete Pool, approximately?

A. Approximately around 1930.

Q. Was your brother a superintendent when you started working for that company?

A. No, sir.

Q. When was your brother advanced to superintendent of the company?

A. Around '39, I am not for certain.

Q. After your brother told you your services were no longer needed there while you were on your vacation in October, did you ever discuss the matter with him of coming back to work for the company?

A. No, sir. [218]

Q. And he never asked you to come back?

A. No, sir.

(Testimony of Herman T. Pool.)

Q. Had he asked you on other years to come back?

A. Well, I don't know whether you would call it—come right out and asking pointblank, we figured on going back at the end of our vacation.

Q. Was your vacation one week with pay from the company and one week on your own time, as you have testified? A. Yes, sir.

Q. And when you went on your vacation October 1st it was about—I believe you testified about October 8th that your brother told you that your services would no longer be needed, is that right?

A. About the 8th or 9th. [219]

Q. (By Mr. Smith): You never did ask for reinstatement at the Holtville Ice Company of any person, did you, Mr. Pool? A. No, sir. [223]

Q. You didn't ask anybody to let you come back? A. No, sir.

Q. (By Trial Examiner Mouritsen): I understand for about the last two years you were an engine operator, Diesel engine operator, is that correct? A. Yes. [224]

Q. (By Mr. Petersen): Was your brother, Pete Pool, the superintendent over practically all the operations in the plant?

A. He had charge of the production end, the engine room, the can tanks and the store room.

Q. And did he also have charge of the repairs on the equipment that they had over in the sheds?

A. Yes, he would send men to the sheds to do it.

[225]

(Testimony of Herman T. Pool.)

Redirect Examination

Q. (By Mr. Ryan): Mr. Pool, when you made application for membership to the union, I believe you signed a document, you signed something?

A. I signed something.

Mr. Ryan: Miss Reporter, will you mark this or identification as Board's Exhibit next in order?

(The document referred to was marked as Board's Exhibit No. 7, for identification.) [228]

HENRY CLARK FREDENBURG

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): State your full name, please.

A. Henry Clark Fredenburg.

Q. Do you also go by Henry C. Fredenburg?

A. Yes.

Q. Or H. C. Fredenburg? A. Yes, sir.

Q. What is your address?

A. 565 Walnut Street, Holtville.

Q. Were you ever employed by the Holtville Ice and Cold Storage Company, Mr. Fredenburg?

A. Yes, sir.

Q. When were you first employed by that company? A. November 10, 1937.

(Testimony of Henry Clark Fredenburg.)

Q. How long did you continue in the employ of the company? A. About October 23, 1941.

Q. 1941. And what was your position with the company when you began your employment?

A. I started out as a laborer. [240]

Q. What were you doing as a laborer?

A. First job, we tore down an ice place in Calexico.

Q. How long did you stay on that particular job as a laborer?

A. Well, it was right after the first of the year.

Q. Of what year? A. 1938.

Q. And then what did you do?

A. I started—well, first I worked one day in the store room, and then I started driving a truck.

Q. And how long did you drive a truck?

A. Well, off and on until I was—until October of '41.

Q. You say off and on.

A. Well, in the winter time I hauled ice to the packing sheds and in the summertime I run a clear ice route in the country.

Q. That took up your entire time, running a truck, did it?

A. If we had any extra time, why, we would work the clear ice platform.

Q. What do you do on the platform?

A. Sell ice to customers.

Q. While you were employed by the Holtville Ice and Cold Storage Company, did you have oc-

(Testimony of Henry Clark Fredenburg.)

occasion to make application to become a member of any union or join any union? A. I did.

Q. When did that occur? [241]

A. About September 26th, in 1941.

Q. What union did you join at that time?

A. A. F. of L. Teamsters.

Mr. Smith: I object to what union he joined as a conclusion and opinion of the witness; he made application.

Trial Examiner Mouritsen: I think that is some merit to that, Mr. Ryan. Let's find out what the circumstances were.

Q. (By Mr. Ryan): Did you make application?

A. Yes, sir.

Q. Where were you when you made your application? A. Over at the Union Temple.

Q. Were you there alone? A. No, sir.

Q. Who was with you?

A. Boys from the ice company.

Q. Other employees of the Holtville Ice Company? A. Yes, sir.

Q. Who are they?

A. Well, there was M. K. Stout and Arthur Standifer and Herman T. Pool, Henry Miller, Lester Hart, Perry Blankenship, Bailey Pool, Tom Herring, Pete Drinkard, that is nine; that was all of us that was there, with myself, that night.

Q. Now, after this occasion when you were at the Union Hall, did you fill out any card that night?

[242]

A. At the Union Hall?

(Testimony of Henry Clark Fredenburg.)

Q. Yes.

A. Filled out an application blank.

Mr. Ryan: I have a blank card today in lieu of that card I submitted last night, which I don't think I will continue to present to the witnesses.

Trial Examiner Mouritsen: Have you compared this one you now have with the blank that is in evidence?

Mr. Ryan: Yes, it is the same thing.

Trial Examiner Mouritsen: Why don't you make the substitution? Is there any objection to that?

Mr. Smith: No, it is a good idea.

Mr. Whitelaw: The only objection we have is lack of foundation or identification by Pool as to the instrument which he actually signed. Of course, the evidence itself shows for that, I believe, so that it probably can be admitted for what it is worth. We appeal, Mr. Examiner, Mr. Pool absolutely failed to identify any instrument which he signed.

Trial Examiner Mouritsen: Well, I think, as he recalled, that was similar to the one he signed.

Mr. Whitelaw: Similar sheet of paper. He couldn't identify anything which was upon the paper itself upon my cross examination. I think he wholly failed to identify or lay the foundation for the introduction of the instrument. He never did say, "That is the instrument which I signed." [243] All he did say was, "Something like that."

Q. (By Mr. Ryan): Mr. Fredenburg, I show you what I have had marked as Board's Exhibit 7

(Testimony of Henry Clark Fredenburg.)

for identification and which is in evidence as Board's Exhibit 7—

Mr. Whitelaw (Interrupting): Has it been admitted?

Trial Examiner Mouritsen: Yes.

Mr. Whitelaw: All right.

Q. (By Mr. Ryan): —and ask you to look at it and tell me whether or not you ever saw one before?

A. Yes, I signed one just like that.

Q. When did you sign one just like?

A. September 26th, 1941.

Mr. Whitelaw: Now, we wish to object if he signed one just like that, that that instrument is not the one which he signed and is not the best evidence at all. If he signed one it must be in the possession of the union, and it has not been disclosed why the original itself has not been introduced. In other words, as I understand the law, you can't introduce a secondary evidence until you prove the primary evidence is lost or destroyed.

Mr. Ryan: We have made a great search for the cards which were signed and have been unable to locate them. The union says they turned them over to an attorney and he says that he didn't have them, he doesn't remember they were ever turned over to him; some way in between they have been lost. [244]

Mr. Whitelaw: We feel until the record, under oath, is established you can't introduce secondary evidence of this type; we object to it on that ground.

(Testimony of Henry Clark Fredenburg.)

Trial Examiner Mouritsen: I will overrule the objection. It is already in evidence.

Mr. Whitelaw: We move to strike it on the ground——

Trial Examiner Mouritsen: On the ground you have outlined?

Mr. Whitelaw: Yes.

Trial Examiner Mouritsen: I will overrule the objection. In other words, it isn't offered as evidence, as I understand it, that this man actually signed it. He says it is just like one he did sign. It is material in that it purports to be an application and bargaining authorization for the union here involved.

Q. (By Mr. Ryan): Did you, Mr. Fredenburg, have a conversation with Mr. Pete Pool at any time after this time when you were up in the union hall that you just testified about?

A. Just once, he asked if I joined.

Q. When was it that you had the conversation?

A. It was just a few days after we were up there, I don't know exactly what date it was.

Q. That you were up at the union hall?

A. Yes, sir.

Q. And where did you talk with Pete Pool? [245]

A. In the engine room.

Q. At the Holtville Ice Plant? A. Yes, sir.

Q. Was anyone else present? A. No, sir.

Q. What was the conversation, what did you say and what did he say?

(Testimony of Henry Clark Fredenburg.)

A. He asked if I joined the union, and I told him yes.

Q. I believe you stated you were laid off, that you worked until sometime in October, 1941, for the company, is that right?

A. Yes, sir.

Q. The circumstances concerning the time that your employment terminated, tell us how it came about that you stopped working at that particular time?

A. I had an ice route and, of course, late in the fall you only run just part of the time, see, maybe twice a week, and then in between times, why, there is ice boxes to be delivered or picked up and we done—would work at that too. And I asked Mr. Smith if there was anything more to do?

Q. Who is Mr. Smith?

A. He is—well, office manager, I guess.

Q. Of the Holtville Ice and Cold Storage Company?

A. Yes. [246]

Q. Go ahead.

A. And he said not right then.

Q. When was this?

A. Well, it was in October—up until the 23rd, I didn't work all the time. I was running my ice route and working part of the time.

Q. Were you running this ice route for the company?

A. Well, really the way we bought the ice and sold it, but the company took care of all the tax on it.

(Testimony of Henry Clark Fredenburg.)

Q. When would you start buying the ice and then selling it? Will you explain that a little bit for us?

A. Start out in the summertime about sometime the last of March, first of April.

Q. You mean the truck drivers of the company would start then buying ice from the company themselves and selling it?

A. Yes, go out on your ice route.

Q. And, as I understand it, working part time for the company besides that, is that right?

A. Yes.

Q. During that slack season? A. Yes.

Q. All right.

Trial Examiner Mouritsen: What were you doing in that part time work for the company?

The Witness: We would either work on the sales platform [247] or deliver refrigerators or pickup, and up until the sheds quit we would haul ice, come in off our route, help all we could.

Q. (By Mr. Ryan): Will you tell us, Mr. Fredenburg, just what happened that you suddenly stopped working altogether for the company? That is what I want you to tell us about, just what occurred.

A. Why, I——

Q. Why is it you are not working for the company now, why did you stop working?

Trial Examiner Mouritsen: I thought he got as far as he went in to see Mr. Smith when things got rather slow. Is that right?

(Testimony of Henry Clark Fredenburg.)

The Witness: I asked Mr. Smith if there was any more work. He said, "No." So then I went back two or three different times and asked if I was going to get to haul ice, when they started up, to the packing sheds, and he always said he didn't know. One day I asked Mr. Willard——

Q. (By Mr. Ryan): When did you ask Mr. Willard? Try to fix it, approximately.

A. It was in December some time.

Q. Had the packing season started, vegetable packing season?

A. Yes, before it started.

Q. Was the Holtville Ice plant under way again?

A. Oh, yes.

Q. And where did you see Mr. Willard? [248]

A. In his office.

Q. Was anyone else present?

A. No, sir.

Q. Will you tell us what was said?

A. I asked him if I was going to get to haul ice, and he said he had no place for me, and I asked him what was the matter, if my work wasn't satisfactory, and he just said, "I have no place for you." I said, "That is funny, you have only had two drivers and you need more than that." He said, "Well, that is my business." That was all, and I left.

Q. And did you thereafter talk to him or any other representative of the company again?

A. No, I didn't.

Q. How many truck drivers were there working for the company when you were a truck driver employed by the company?

(Testimony of Henry Clark Fredenburg.)

Mr. Smith: What period do you mean, Mr. Ryan?

Trial Examiner Mouritsen: Tell us during the slack season how many truck drivers were there?

The Witness: Four drivers.

Trial Examiner Mouritsen: And during the busy season what was the largest number of drivers that were ever there while you were there?

The Witness: One season, I think, we had six.

Trial Examiner Mouritsen: How about the season, the last busy season you worked, were there six then or fewer than [249] that?

The Witness: I believe that that was the year we had six because they cut the hours down to forty hours a week.

Trial Examiner Mouritsen: That would be in the fall of 1940 and spring of 1941, is that right?

The Witness: Yes, sir. It really would be just in the spring of '41.

Q. (By Mr. Ryan): Then at the time that your employment terminated in the fall of 1941, how many other drivers had there been working for the company right up to that time? A. Three.

Q. Three. Including yourself?

A. No, four with me.

Q. Who are the other three?

A. Tom Herring, Pete Drinkard, Jess Cardwell.

Trial Examiner Mouritsen: Is that C-a-r-d-w-e-l-l?

The Witness: Yes, sir.

Mr. Ryan: I have no further questions.

(Testimony of Henry Clark Fredenburg.)

Cross Examination [250]

Q. Now, you never did apply for reinstatement, did you, Mr. Fredenburg, when the season commenced in the middle of December?

A. Yes, sir.

Q. To whom did you apply?

A. Mr. Willard.

Q. And that is the conversation you spoke of, he said he had no place for you? A. Yes, sir.

Q. Was that all that was said? [254]

A. Yes, sir.

Q. Didn't he tell you that the change over from the Diesels to the electric power, that he used as many men as he could? A. No, sir.

Q. Who did you say the other men were that were delivering clear ice in the summertime?

A. Tom Herring, Pete Drinkard and Jess Cardwell.

Q. Had they all stopped delivering clear ice about October 1st, the same as you did?

A. About the same time.

Q. It was all because there was no business?

A. Yes, sir.

Trial Examiner Mouritsen: Do you know why these other men quit, stopped delivering ice then?

The Witness: Do I know why?

Trial Examiner Mouritsen: Yes.

The Witness: Because they didn't have any place to sell it.

Mr. Smith: I think that is all.

Mr. Whitelaw: No questions.

(Testimony of Henry Clark Fredenburg.)

Redirect Examination

Q. (By Mr. Ryan): When the season started up again, do you know whether or not the other truck drivers went back to work? A. Yes. [255]

Q. Who were the ones that went back to work?

A. Pete Drinkard was the only one that was off at the time?

Q. Did he return when the season started up in the ice plant? A. Yes, sir.

Q. Cardwell and Herring, as I understand it, went right on working?

A. Herring worked for the company all the time and Cardwell worked on—bought his ice and sold it the same as the rest of us.

Q. Did he continue to buy ice and sell it after you had stopped in the fall of '41?

Q. Yes, he took all the routes in the wintertime every year and run them all winter. They run an ice route every winter.

Q. He wasn't one of the truckers that carried ice over to the vegetable sheds?

A. No, the only time he helped, maybe if we was short he might haul a few loads.

Q. You say Mr. Herring continued to work all the time? A. Yes, sir.

Q. Did he continue to truck ice after you had stopped there in the fall of 1941, or what did he do for the rest of the time until the plant started up again?

Mr. Smith: I object to that as calling for a con-

(Testimony of Henry Clark Fredenburg.)

clusion and opinion of the witness, if he wasn't there he wouldn't [256] know except by hearsay.

Trial Examiner Mouritsen: Let me have the question.

(Question read.)

Q. (By Mr. Ryan): If you know.

Trial Examiner Mouritsen: You can answer if you know.

The Witness: Yes, he delivered ice for a while and worked the platform. They had to have somebody on the platform for people that come to the plant for their ice. And then pick up refrigerators, they rent refrigerators to people.

Trial Examiner Mouritsen: How do you know he did these things after you left the plant? Did you see him do them?

The Witness: Yes.

Mr. Ryan: That is all.

Recross Examination

Q. (By Mr. Smith): Mr. Fredenburg, in previous years practically this same procedure had been followed, had it not, you had delivered ice to the sheds while the carrot packing season was in progress and you thereafter bought clear ice yourself and sold it to formers? A. Yes, sir.

Q. There was always a spell after you stopped delivering clear ice that you were off until the plant started up again late in December, is that correct? A. Yes.

(Testimony of Henry Clark Fredenburg.)

Q. For the reason that there was no ice business of any kind [257] from about October on, until the lettuce season started in December?

A. No, there was no ice business then. [258]

EDWARD ACHSTETTER, JR.,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please? A. Edward Achstetter, Jr.

Q. And where do you live, Mr. Achstetter?

A. El Centro.

Q. What is your occupation?

A. Secretary-Treasurer of the Truck Drivers, Warehousemen and Helpers Union 898.

Q. Is that organization affiliated with any other organization?

A. Affiliated with the International Brotherhood of Team- [267] sters, Chauffeurs, Warehousemen and Helpers, A. F. or L.

Q. How long have you held that position?

A. Since June, 1942.

Q. Who was the secretary-treasurer of that local before you became such? A. Ray Magness.

Q. As secretary treasurer, can you tell us whether or not the local keeps any record of people

(Testimony of Edward Achstetter, Jr.)

who make application for membership in the local and make any payment thereon?

A. Yes, sir, I do.

Q. What do you call that book?

A. Day book.

Q. And do you have any other book that records the same material? A. Ledger.

Q. Has Local 898 got a ledger?

A. They have.

Q. Do you have it there? A. Yes, sir.

Q. Will you look at it and tell me whether or not there is any record there regarding Perry J. Blankenship?

A. Perry J. Blankenship, there is a record.

Mr. Whitelaw: To which we object on the ground there is no proper foundation laid. He doesn't know whether the entries are made correctly or incorrectly or under whose [268] supervision they were made, all he has is the *bear* record; he is in no position to testify concerning these books.

Trial Examiner Mouritsen: Are these the official records of the union?

The Witness: These are the official records of the International.

Trial Examiner Mouritsen: Do you, as secretary-treasurer of the union, keep them?

The Witness: I am in complete charge of them.

Trial Examiner Mouritsen: I will overrule the objection. [269]

(Testimony of Edward Achstetter, Jr.)

Mr. Whitelaw: I presume, for the purpose of the record, we better withdraw our objection which we have heretofore made.

Mr. Smith: Those objections went to the signed applications, that still stands. I am willing to stipulate that you receive in evidence what your ledger shows.

Trial Examiner Mouritsen: Very well.

Mr. Whitelaw: That this witness testify.

Mr. Smith: That he can read into the record what the ledger shows.

Mr. Whitelaw: I so stipulate. Any other statement I made about withdrawing objections to them, I ask be stricken from the record.

Trial Examiner Mouritsen: Very well, they may be stricken.

Q. (By Mr. Ryan): Do you have the ledger in front of you of Local 898? A. I do.

Q. Does that record reflect anything regarding Perry J. Blankenship?

A. It is the only official record of his entrance into the Teamsters Union.

Mr. Whitelaw: Now, we would like to have the answer stricken as being a voluntary statement, not responsive to the question. We have stipulated, in order to save time [275] and as Mr. Magness isn't here, *he merely* testify as to what the record shows, without any comment. Don't you think that is correct, Mr. Ryan, and fair?

Mr. Ryan: Yes.

Q. (By Mr. Ryan): If there is anything in that

(Testimony of Edward Achstetter, Jr.)

ledger regarding Perry J. Blankenship, give the page number of the ledger.

A. On page 398 of the ledger it shows Perry J. Blankenship was initiated on February 9, 1942; paid \$5.00 on 12-2-41; \$3.00 on 1-12-42; and \$7.00—

Mr. Smith: Just a minute. I am trying to get them; \$3.00 on what date?

The Witness: 1-12-42.

Mr. Peterson: May I state that instead of Mr. Smith having to write all of them off, we will be perfectly willing, during the noon recess, to have copies made of each one of them so all counsel will have a copy of whatever is going in the transcript.

Mr. Smith: That is fair enough.

The Witness: Payment of \$7.00 made on——

Mr. Whitelaw: Now, Mr. Examiner, may we ask to have the words “completing his initiation fee” stricken, in view of our stipulation?

Trial Examiner Mouritsen: Well, yes, that may go out.

Mr. Whitelaw: Just in fairness to our stipulation. [276]

Trial Examiner Mouritsen: Yes.

Q. (By Mr. Ryan): I would like to ask you one question that doesn't have anything to do with the ledger. What is the initiation fee into the Teamsters Local 898?

A. At present—we have two initiation fees. A \$10.00 initiation fee for preliminary organization, and a \$25.00 standing initiation fee for all applicants under contracts.

(Testimony of Edward Achstetter, Jr.)

Q. How long has this been in effect?

A. I wouldn't know, the initiation fee and dues were changed before I came down here. I think it was early in '41—or early in '42.

Q. Do you know what they were immediately prior to that change?

A. \$15.00 initiation fee.

Q. Have you read everything from the record on Perry J. Blankenship?

A. No, it shows here he was issued a withdrawal card on 2-24-42; statement "going into defense plant in L.A."

Q. Is there anything else in that record?

A. That is all.

Q. Will you read the entry in that book on L. H. Davis, if there is one?

Mr. Whitelaw: Do you have the record there of the pages?

Mr. Ryan: Yes. 244.

Mr. Whitelaw: I suggest it would save time——

[277]

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

The Witness: L. H. Davis, on 10-3-41, paid \$10.00; that is the only record of him.

Q. (By Mr. Ryan): On George P. Drinkard, 227?

A. George P. Drinkard, paid \$5.00 on 9-26-41.

Mr. Whitelaw: What other record is there on there, Mr. Achstetter?

(Testimony of Edward Achstetter, Jr.)

The Witness: There is an abbreviation in pencil recording suspension.

Trial Examiner Mouritsen: "Requiring suspension."

The Witness: I can't understand. The auditor might have put that in there, or the girl checking through the dues. It is a ruling of the——

Trial Examiner Mouritsen: Here is my question: Merely indicate what the record says. It has "s.u.s." which is what, the abbreviation for suspended?

The Witness: I imagine it is, I don't know.

Trial Examiner Mouritsen: No date?

The Witness: No date.

Q. (By Mr. Ryan): Would you read the record on Henry Clark Fredenburg at page 225 of the record?

A. Henry C. Fredenburg paid \$5.00 9-26-41.

Mr. Whitelaw: What other record is there on that? [278]

The Witness: There is a notation in pencil, abbreviation, I imagine, of suspensian, "s-u-s"; no date.

Q. (By Mr. Ryan): On Herman Fruhn, 224, of the ledger?

A. Herman Fruhn paid \$1.00 on 9-26-41; paid \$5.00 on 10-3-41; abbreviation in pencil, marked "s-u-s", no date.

Q. Lester C. Hart, page 226.

A. Lester C. Hart paid \$1.00 on 9-26-41.

Mr. Whitelaw: And the notations?

(Testimony of Edward Achstetter, Jr.)

The Witness: Notation in pencil, "s-u-s" no date.

Q. (By Mr. Ryan): Howard H. Ireland?

A. No record of Ireland.

Q. H. G. Miller, 228?

A. H. G. Miller paid \$1.00 9-26-41. Notation in pencil, "s-u-s", and no date.

Q. Herman T. Pool, 223.

Trial Examiner Mouritsen: Pool's testimony is already in with respect——

Mr. Ryan (Interrupting): We might as well complete the ledger.

The Witness: On 9-26-41 paid \$5.00; on 10-3-41 paid \$5.00; on 10-14-41 paid \$5.00; withdrawal card.

Q. (By Mr. Ryan): Totaled up there——

A. Total of \$15.00. Withdrawal card issued October 31, '41. Deposited withdrawal card again on 8-6-42.

Trial Examiner Mouritsen: It shows various dues payments [279] since that time?

The Witness: Yes, paid dues——

Trial Examiner Mouritsen: Never mind going into detail. As a matter of fact, the main thing I am interested in is the initial date of payment as reflected in the book.

Q. (By Mr. Ryan): Arthur Standifer, 230.

A. Arthur Standifer paid \$15.00 10-3-41.

Mr. Whitelaw: And the other notation?

The Witness: The other notation is "s-u-s"; no date.

(Testimony of Edward Achstetter, Jr.)

Q. (By Mr. Ryan): M. K. Stout, 229?

A. M. K. Stout paid \$15.00 10-3-41. There is a list of dues paid, October, November and December, 1941, and January, February, March in 1942. And a notation written on here in pencil, "s-u-s"; no date.

Q. Do you have any notation in your ledger regarding Tom Herring?

A. No, there is no—he never paid any money at all.

Q. I see. As I understand it, it is only those who have paid money that would be in that book?

A. That is right. [280]

GEORGE R. HARLAN,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Mr. Harlan, will you state your full name, please? A. George R. Harlan.

Q. Where do you live, Mr. Harlan?

A. Holtville, California.

Q. Mr. Harlan, were you ever employed by Holtville Ice and Cold Storage Company?

A. Yes, sir.

Q. When were you first employed and how long did you continue in the employ of that company?

A. I was employed, I think, some time in 1938,

(Testimony of George R. Harlan.)

in the spring, I believe, and I am still under the employ of them.

Q. When you were first employed by the company, Mr. Harlan, what position did you occupy?

A. In the store room. [290]

Q. Working in the store room?

A. Working in the store room.

Q. And how long did you continue on that particular job?

A. I don't remember exactly, I think approximately the two winters.

Q. Then after you had done that, Mr. Harlan, what other job did you perform thereafter?

A. I pulled ice for a while. I don't remember just how long, I think I started that in the spring.

Q. Would that be the spring of 1942?

A. That was in the spring of—I guess it would be, I wouldn't remember exactly. Let's see, this is '43; I guess that was in the spring of 1941.

Q. How long did you continue on that job?

A. I finished that season on that job, just a short period.

Q. Then what did you do?

A. Well, I was in that fall, I went in as operator, that was pulling ice and operating the compressors.

Q. And you continued on that job until when?

A. I am still on that job.

Q. You still are. Just about when did you start on that job, that last job you have just mentioned?

(Testimony of George R. Harlan.)

A. That was either—I think the latter part of October.

Q. Of what year? A. 1941. [291]

Q. Mr. Harlan, did you ever have a conversation with Mr. Hugh T. Osborne?

A. Yes, sir.

Q. When did you first have the conversation with him?

A. I think that was probably in October of 1941.

Q. Where did the conversation take place?

A. At my home.

Q. Was anyone else present during the conversation, other than you and Mr. Osborne?

A. No one else—I think my wife was there, that is all.

Q. Can you tell us how Mr. Osborne happened to be at your home on that occasion?

A. No, not exactly. He came—I can, too, I guess. He came to the house and knocked at the door and I asked Mr. Osborne in, and he says, “I guess you know my business here.” And I says, “Well, I don’t know. I know what you do, but I don’t know what your business is here.” I don’t know that that is the exact words, it was approximately that. He says, “I am representing the Associated Farmers.” He says, “I wanted to find out something about the union action at the ice plant and I was told I could come here and talk to you.” And I told him that he could, that I had no secrets myself. And he asked me about

(Testimony of George R. Harlan.)

the men that went into the union, and I told him that some of them had gone into the union; I don't know now whether I told him who they were or [292] not, or whether I knew all of them that had gone. And I also told Mr. Osborne I wasn't in favor of going in the union and asked him the question what could be done to keep from going in. And he spoke about the Association some of the places have here in the Valley, and I had read about some of those in the papers.

Q. Did he indicate what kind of associations?

A. He just explained it as approximately what it was. It was practically along the same lines as a union.

Q. Did he mention the names of some associations, employees' associations in the Valley?

A. Yes, he did, he mentioned the name of Kramer's and I think possibly some of the others. I wouldn't say about them.

Q. Kramer, is that Kramer Baking Company?

A. Kramer Baking Company, I believe.

Q. A company doing business here in the Valley, is it?

A. Yes, sir.

Q. What did he say about those associations, if anything?

A. He just told me that we could operate one of those there if we cared to, and it would take the place of the union, we could have our bargaining rights.

Q. Did he say anything else on that occasion, Mr. Harlan, that you can remember?

(Testimony of George R. Harlan.)

A. I think I asked Mr. Osborne if he could get me a copy [293] of one of those associations, and he said he would try. And a few days later, anyway, I don't know whether it was a few days, I don't remember now, I did meet Mr. Osborne and he gave me a copy.

Q. Where did you meet him a few days later, Mr. Harlan?

A. It was on the street, I think; he gave me the copy.

Q. In Holtville? A. In Holtville, yes, sir.

Q. Did you meet him by appointment?

A. No.

Q. Just happened to bump into him?

A. I suppose just happened to meet him.

Q. On that occasion you say he gave you some—what did he give you?

A. I think it was a copy of Kramer Bakery's Association or part of the copy of it, or something, and it seems to me like there was another one; and I won't say for sure about that.

Q. Did anything else take place at the meeting when you saw Mr. Osborne on this occasion down town in Holtville that you just now testified to?

A. I don't think there was in particular. We talked a while, but what the conversation was, I couldn't say now.

Q. Did you take the material with you that he had given you [294] on that occasion?

A. Yes, sir.

(Testimony of George R. Harlan.)

Q. Then what did you next do, Mr. Harlan, with reference to that material, if anything?

A. I think I talked to some of the boys. I talked to Mr. Herring.

Q. Tom Herring? A. Tom Herring.

Q. Is he an employee of the Holtville Ice & Cold Storage Company? A. Yes, sir.

Q. He was at that time?

A. He was at that time, yes, sir.

Q. Where did you talk to Mr. Herring?

A. I went to his house to talk to him.

Q. And when was that, approximately?

A. I don't remember whether it was the same evening or the next day, it was shortly after I got the papers.

Q. This, as I understand it, was all in the early part of October?

A. I think approximately in October some time.

Q. And what did you talk about at Mr. Herring's home when you were there? Was anyone else present besides you and Mr. Herring?

A. No, just I and Mr. Herring. [295]

Q. What was the subject of the conversation?

Mr. Whitelaw: I feel this is pretty much hearsay. On behalf of respondent Associated Farmers and Hugh T. Osborne, I think it would be pretty much hearsay. I don't know how far you go on the question of hearsay.

Trial Examiner Mouritsen: I will permit him to testify, there may be some connection.

(Testimony of George R. Harlan.)

Mr. Whitelaw: If it isn't hearsay, I don't know what is hearsay.

Trial Examiner Mouritsen: What are you basing your objection on, upon the ground it is conversation which takes place out of the presence of any representative of the Associated Farmers or any of the other respondents?

Mr. Whitelaw: Yes.

Trial Examiner Mouritsen: I will overrule the objection and permit the witness to answer. Tell us what you said to Herring and what he said to you.

The Witness: What was the question?

Q. (By Mr. Ryan): On this occasion when you met at Mr. Herring's home, after you had gotten this material from Mr. Osborne, you just testified about, what did you say and what did Mr. Herring say?

Mr. Whitelaw: I make my objection to this question, and the same ruling applies, I presume?

Trial Examiner Mouritsen: Yes. [296]

The Witness: Why, I just—I showed him the papers I had and asked him what he thought about it. And I really couldn't remember just the words that passed between us there, but we talked a few minutes there and I went on back home.

Q. (By Mr. Ryan): Thereafter did you have any further conversations with anyone about this material that you had in your hand, this Association, Employees Association material?

A. Yes, I had conversations with several of the

(Testimony of George R. Harlan.)

other employees, I couldn't say just which ones now.

Q. When did you talk to them?

A. I think it was about that same time, it may have been the same day. I don't know. A day or two later I talked to some of them.

Q. Where did the conversations take place, Mr. Harlan?

A. Well, at different places. I think I talked to Mr. Standifer.

Q. Was that Art Standifer?

A. Art Standifer. And I believe he was at the plant at the time.

Q. Working? A. Working, yes.

Q. What did you say to him, if you can recall?

A. I just asked him—I just asked him what he thought [297] about that.

Q. About these associations?

A. About the association.

Q. Talking about employees association?

A. The employees association, and he told me, he says, "I don't know." And then I think he referred me to Herman Pool; he says, "Whatever he says about it."

Q. Then did you talk to Herman Pool?

A. I don't remember that I talked to Herman Pool or not, I wouldn't say for sure.

Q. Did you have the material with you when you were talking to Standifer, the employees association material that you had received from Mr. Osborne?

(Testimony of George R. Harlan.)

A. I think I did have, but I don't think he looked at it. I think I just had it in my pocket. I wouldn't say positive to that, though.

Q. Did you talk to any other employees?

A. Yes, I talked to some of the others, but I couldn't recall just who they are now.

Q. Was it the same time you talked to Standifer?

A. The same evening, the same evening I talked to Herman Fruhn.

Q. Was that also at the plant?

A. Yes, it was also at the plant, in the dressing room. He was getting ready to go home at the time, I believe. [298]

Q. Did you thereafter have a meeting at your home? A. Yes.

Q. When did that meeting take place, approximately?

A. I think that was the latter part of October.

Q. 1941? A. 1941, some time in October.

Q. Who was present at that meeting, if you can remember?

A. I don't know that I can recall, but there were six or seven boys there. Mr. Stout—

Q. Would that be M. K. Stout?

A. M. K. Stout.

Q. Was he an employee of the company at that time?

A. Yes, sir. And Richard Ireland.

Q. How do you spell that? Is that I-r-e-l-a-n-d?

A. I-r-e-l-a-n-d, I think, I wouldn't say for

(Testimony of George R. Harlan.)

sure; I don't know. And I believe Pete Drinkard was there.

Q. Were any other employees there besides those?

A. Yes, there were some more there. I can't recall their names just now.

Q. Approximately how many were there altogether?

A. I think there was approximately seven.

Q. Had this meeting been called by someone at your home?

A. I asked the boys to come.

Q. How had you notified them, Mr. Harlan, to come to your home to this meeting? [299]

A. Personally.

Q. Contacted them personally?

A. Yes.

Q. And where had you contacted them?

A. In different places.

Q. Had you contacted any of them at their work in the plant?

A. I don't remember that I did, no.

Q. What took place at the meeting—first of all, who was in charge of the meeting, if anyone was, at your home?

A. I don't know that anyone was in particular, unless it would be called myself. I asked the boys to come to my house, and I had asked Mr. Osborne to come in and explain the association to us.

Q. Was he present at the meeting?

A. He came later, after the boys did, and stayed a little while and then left.

(Testimony of George R. Harlan.)

Q. What did Mr. Osborne do and say at the meeting, if anything?

A. Well, I don't remember just exactly what he said. He just explained the ways of the association.

Q. And now, do you have reference to employees association?

A. Employees association, yes, sir.

Q. And what did he say in that regard, in substance, if you can't remember his exact words?

A. Well, I think that it was—I couldn't say just what [300] was said, but he explained the organization and the ways to organize it. And that is about all I could say about it.

Q. Did you have any material there at the meeting on the associations?

A. We had these copies I had before this.

Q. Can you tell us a little more definitely what kind of material it was, just what was the nature of this association material that you had?

A. The nature of the association material was the constitution and by-laws, I presume are approximately what Kramer Bakery Company had.

Q. And was any explanation or reading of that material done at the meeting by anyone?

A. I don't remember whether it was or not.

Q. Is that approximately all that occurred at that meeting that you can think of?

A. I think it was, approximately.

Q. Thereafter, did you have occasion to attend a meeting at M. K. Stout's home?

(Testimony of George R. Harlan.)

A. Yes, sir.

Q. Approximately when did that meeting occur with reference to the one you had in your home?

A. That was later that that meeting occurred, a few days later, approximately, oh, I would say maybe four or five days, a week, something like that. [301]

Q. And who was present at that meeting, if you know?

A. Let's see, Mr. Stout and Lloyd Gettle.

Q. Was Mr. Gettle an employee of Holtville Ice Company at that time?

A. Yes, sir. And I think Richard Ireland was there. [302]

Trial Examiner Mouritsen: Off the record.

(Discussion had off the record.)

Trial Examiner Mouritsen: On the record.

The Witness: There was another one or two there, I don't remember just now who they were.

Q. (By Mr. Ryan): Were they employees of the company? A. I think so, yes.

Q. Was Mr. Osborne present? A. No.

Q. Who called this meeting at Mr. Stout's home, if you know, if anybody did?

A. Well, I don't know as anybody in particular, we just kind of decided on having it there, several of us together.

Q. Was anyone in charge of the meeting?

A. I don't remember just who was in charge of the meeting. I think maybe Mr. Stout was, I don't know.

(Testimony of George R. Harlan.)

Q. What was said and done at that meeting by the individuals present, if anything, to indicate who did what or said what?

A. Well, the officers for the Association were elected at that meeting.

Q. How were they elected, Mr. Harlan?

A. Just by a verbal vote.

Q. Who were elected officers?

A. I was elected president and Tom Herring was elected vice-president and M. K. Stout was elected secretary- [303] treasurer.

Q. How was that vote taken? How did they vote?

A. Well, I couldn't say just exactly how we voted.

Trial Examiner Mouritsen: A voice vote?

The Witness: Voice vote.

Q. (By Mr. Ryan): What was the total number of employees of the Holtville Ice Company who were present there, if you can remember?

A. I don't remember, but I think there was about six or seven.

Q. Was anything done, other than the election of officers for the Association on that occasion?

A. I don't remember. Let's see, yes, I think we kind of got together on a wage scale, I think, and made——

Q. Was anything done regarding a constitution and by-laws?

A. No, we had taken the by-laws of the—I don't know whether there was anything done at all about

(Testimony of George R. Harlan.)

the by-laws at that particular time or not; I wouldn't say for sure.

Q. Up to that point had you adopted any by-laws or constitution?

A. Only the ones we had the copy of.

Q. Did I understand you to say you had discussed wage scales? A. I think we did, yes.

Q. Did you put anything down in writing regarding wage [304] scales and working conditions?

A. Yes, it was made out there, part of it, at least, was made out that night.

Q. What was made out that you can remember? I mean what was the nature of the proposals that you made out, what did they pertain to?

A. It pertained to a summer's vacation and our wages and hours.

Q. Was that about all that took place at that meeting, that you can remember?

A. That is it approximately, that I can recall.

Q. After that meeting was anything done with those proposals that had been drafted in that meeting? A. Yes, sir.

Q. What was done with them?

A. I taken the proposals to Mr. Willard.

Q. When did you take them to Mr. Willard?

A. I think it was a day or so after the meeting.

Q. In M. K. Stout's home?

A. After the meeting in M. K. Stout's home.

Q. Where was Mr. Willard when you got the proposals to him?

A. In his office at the ice plant.

(Testimony of George R. Harlan.)

Q. Was anyone else present?

A. No, I don't believe there was.

Q. Did you have a conversation with Mr. Willard on that [305] occasion?

A. A short conversation, yes.

Q. What did he say and what did you say on that occasion?

A. I took the proposals in to Mr. Willard and laid them on his desk, and he asked me a number of questions about the Association and who was the officers and what they were planning on doing. And then he looked at the proposal and he said he couldn't use that proposal at all. So I left the proposal there and told Mr. Willard to look it over at his disposal and let me know what he thought about it. I think a few days later, approximately a week, Mr. Willard called me in and gave me a counter proposal.

Q. What did his counter proposal cover, what subject matter?

A. It was practically the same as we had given him, with a few changes in it. We had asked for a few days sick leave, I believe, on our proposal, which he didn't have on his. And then he had changed the wage scales on there and, as I remember, that was about all the changes there was on it.

Q. When you went to his office, with these proposals which you gave him, did Mr. Willard ask you at that time to give him any evidence as to the membership of the Association?

(Testimony of George R. Harlan.)

A. He asked me what the Association was, what it consisted of, and what the name of the organization was. And who [306] the officers were in it.

Q. What did you tell him?

A. I told him who the officers were and the name of the organization, explained it to him as best I could.

Q. Did he make any inquiry as to whether or not you had a majority signed up or not?

A. I think he did, I am not sure, but I think he asked me how many was signed up on it.

Q. Did you submit any evidence, any documentary evidence to Mr. Willard, Mr. Harlan, as to the membership of the Association?

A. I don't think I did any more than by word.

Q. Then you say a few days after that you received some counter proposals from him. Can you indicate whether that was still in the month of October, 1941? Just when was that?

A. I wouldn't say positive, but I believe that was a day or two after the 1st of November. Possibly could have been the latter days of October.

Q. Then after you had received the proposals from Mr. Willard that you just testified about, was there a meeting held at your home?

A. Yes, sir.

Q. When was this meeting held at your home?

A. That was, I think, in the first part of November. [307]

Q. And who was present at that meeting, Mr. Harlan, if you can remember?

(Testimony of George R. Harlan.)

A. I wouldn't say, but I think it was approximately the same amount of boys, the same ones that was at the other meetings.

Q. How many was that, about, six, you say?

A. About seven, I think.

Q. And who had called that meeting, if anyone had?

A. I did.

Q. How did you notify the boys to be in attendance at the meeting?

A. Just verbal.

Q. Word of mouth?

A. Yes.

Q. Where did you contact them to notify them there would be a meeting at your home?

A. Well, I couldn't say that, I think it was just different places, probably.

Q. Were any *contracts* made while they were on the job, working at the plant?

A. I really couldn't say.

Q. At this meeting in your home we are now talking about, was Mr. Osborne present?

A. Yes, Mr. Osborne came to that meeting. I asked Mr. Osborne to come to help us start the books, show us how to [308] start the books off, and Mr. Osborne came to that meeting, and I don't think he was there but a few minutes; he showed us how to write the minutes up, started the minutes off.

Q. The minutes of the Association, this employees' association?

A. Yes, sir, explained it to us, and then he left.

Q. And then after he had done that and left, did

(Testimony of George R. Harlan.)

the people who were present conduct any further business? A. Yes, sir.

Q. What was the business conducted at that meeting, what was said and what was done by the individuals present?

A. Part of the business was deciding on the dues and initial fees.

Q. Initiation fees? A. Yes, sir.

Q. Was any decision reached on that?

A. Yes, sir.

Q. What decision was reached on that? [309]

The Witness: I think the dues were set at one dollar a month and the initial fee was set, for the charter members, at five dollars and twenty-five for new members.

Q. (By Mr. Ryan): Thereafter did the Association of employees have any contact with Mr. Willard, after this meeting you have just talked about?

Trial Examiner Mouritsen: I would like to know what happened to the counter proposal.

Mr. Ryan: Oh, yes. [310]

Q. (By Mr. Ryan): What did you do with the counter proposal after you obtained it from Mr. Willard, Mr. Harlan?

A. We had another meeting.

Trial Examiner Mouritsen: That wasn't discussed at this meeting you just told us about?

The Witness: I don't remember, I think that was the same meeting that we discussed some of that. I wouldn't say positive, it has been too long ago.

(Testimony of George R. Harlan.)

Q. (By Mr. Ryan): What discussion was had on the proposals?

A. Well, we discussed the proposals that Mr. Willard had gave us and if I remember we made some changes in that and went back to Mr. Willard with it. It seems to me as though we went back and forth two or three times there, I don't remember just exactly how many times.

Q. When did you have your first meeting with Mr. Willard on the counter proposal which he had given you and which you had made some changes in?

A. That was pretty quick after we had that meeting. I don't remember, in a day or so, I think.

Q. With reference to a date, was it in October or November? A. That was in November.

Q. What part of November?

A. First part of November.

Q. Where did the meeting with Mr. Willard take place? A. In his office. [311]

Q. Who arranged for the meeting?

A. I think that I did. I gave Mr. Willard the proposals *we taken* back to him, and told him to study them over and call us in, and he set the day when we could come in. I think it was an evening or two later I gave them to him.

Q. At the time you did then go in and meet with Mr. Willard, who was present?

A. I think there was at that time practically all the employees. There must have been, probably

(Testimony of George R. Harlan.)

ten there; there might have been a couple of the boys out on duty.

Q. What time of day was it?

A. It was in the evening.

Q. About what time?

A. At approximately, oh, I will say maybe 7:00 o'clock.

Q. 7:00 o'clock. Was the plant operating at the time? A. Yes, sir.

Q. Was there a shift which would be working normally during that period?

A. There was a shift working.

Q. How many shifts was the plant running at that time?

A. I think they was running the three shifts.

Q. Were there men in the office on that occasion when you met with Mr. Willard who would normally have been working in the plant?

A. I don't know whether there were in the office or not. [312]

Q. Was there anyone present on behalf of the company, other than Mr. Willard?

A. I believe Mr. Smith—I don't remember whether he was at one or two of those meetings we had with Mr. Willard.

Q. And what took place at this meeting in Mr. Willard's office?

A. We just discussed the proposals and finally came to an agreement on them in the last meeting we had with Mr. Willard at that time.

Q. How many meetings did you have?

(Testimony of George R. Harlan.)

A. I won't say for sure, but it was probably two or three or four, I don't know exactly.

Q. Was Mr. Osborne in attendance at any of those meetings in which you were negotiating with Mr. Willard?

A. Not when the whole Association met with Mr. Willard.

Q. Did he attend at any time?

A. Mr. Osborne was in the office at one meeting there when he was—when there was two or three of us in there with Mr. Willard, I don't remember just what meeting that was, I couldn't say.

Q. One of the meetings when you were negotiating?

A. It was while the negotiations were going on, yes. [313]

Q. You did eventually come to an agreement on a contract?

A. Yes, sir.

Q. And approximately when was that that you arrived at your agreement with the company?

A. That was in, I think in November, I don't know. I [315] guess it was probably the first part of November some time, or one of those days, as I say, we went back and forth several times. I couldn't say just the day or how far it had gotten into November.

Q. At the time you began negotiating with Mr. Willard, or the time you presented your proposals to him the first time, how many people had become members of the Association, employees' association?

(Testimony of George R. Harlan.)

A. I think that approximately all of them, there might have been one or two that wasn't signed up that was employed there at the time.

Q. About how many was that?

A. It was about a dozen, I guess.

Q. Up to that time, according to your testimony, I believe there were six or seven that ever attended any meetings up to that time, isn't that right?

A. Yes, there was hardly all of them ever made the meeting.

Q. Did the Association have a regular negotiating committee? A. They did have, yes.

Q. How was that committee selected?

A. By a verbal vote.

Q. When was it selected, do you know or remember?

A. I don't know whether that was selected, all of them, at the night we had the meeting of the—elected the officers, but it seems to me as though they were. I think [316] they were elected that night, but I am not positive, though.

Q. Who was selected, by the way, on this negotiating committee?

A. Lloyd Gettle and Pete Drinkard, I believe, and then the three officers.

Q. There were about five present?

A. There were five.

Q. Who was elected on the negotiating committee, Mr. Harlan?

A. Lloyd Gettle and Pete Drinkard.

(Testimony of George R. Harlan.)

Mr. Yeager: He already answered that by saying two men, plus the elected officers.

Mr. Smith: Plus the three officers.

Q. (By Mr. Ryan): The three officers plus the two men constituted the negotiating committee?

A. Yes.

Mr. Ryan: I think I will offer this one and withdraw it and put in the copy.

Miss Reporter, will you mark this Board's Exhibit 5.

(The document referred to was marked as Board's Exhibit No. 5, for identification.)

Mr. Examiner, I now have here the original of the contract between the Holtville Ice and Cold Storage Company employees Association and the Holtville Ice and Cold Storage Company, and I am going to present that to the witness for identification in lieu of the copy of the contract which [317] I previously referred to on the record as Board's Exhibit 5 for identification, so there won't be any confusion.

Trial Examiner Mouritsen: Do you stipulate, Mr. Smith, this is a true and correct contract entered into between the company and the Association?

Mr. Smith: That is the original, yes.

Mr. Ryan: Which became effective as of November 1st, 1941.

Mr. Smith: Yes.

Mr. Ryan: That contract is signed on behalf of the Holtville Ice and Cold Storage Company by

(Testimony of George R. Harlan.)

F. A. Willard, as president, and on behalf of the Holtville Ice and Cold Storage Company Employees' Association by George R. Harlan, president; by Tom F. Herring, its vice-president; and by M. K. Stout, its secretary and treasurer.

Trial Examiner Mouritsen: That is stipulated?

Mr. Smith: Yes.

Mr. Ryan: I offer it in evidence as Board's Exhibit 5, with the proviso that we can withdraw the original and substitute a copy therefor.

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Smith: No.

Mr. Whitelaw: No.

Trial Examiner Mouritsen: It is received in evidence [318] as Board's Exhibit 5, and the substitution can be made for it.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 5, was received in evidence.)

BOARD'S EXHIBIT No. 5

AGREEMENT

This Agreement, made and executed this first day of November, 1941, by and between the Holtville Ice & Cold Storage Company, and its Successors and Assigns, hereinafter referred to as the Employer, the singular to include the plural, and the Holtville Ice & Cold Storage Company Employees Association, hereinafter referred to as the Association.

(Testimony of George R. Harlan.)

Witnesseth: That whereas both of the above-named parties desire to enter into an agreement respecting wages, hours, working conditions, and other matters affecting operation of that certain business known as Holtville Ice & Cold Storage Company, and situated in Holtville, State of California, and

Whereas, the Employer hereby is willing to recognize the Association as the representatives of the employees of the Holtville Ice & Cold Storage Company,

Now, therefore, for an in consideration of the mutual covenants to be kept and performed by each of the parties hereto, it is understood and agreed as follows:

1. The Employer recognizes the Association as the sole and exclusive representative of the employees of the Employer for the purpose of collective bargaining during the life of this agreement.

2. The Association agrees not to engage in sympathetic strikes.

3. The Association agrees that it will use all legal and legitimate means to see that contracts between its members and the Employer are strictly adhered to and faithfully kept.

4. There shall be no strike or other suspension of work by Association members during the life of this agreement.

5. It is mutually agreed that any differences that may arise between the parties to this agreement shall be settled by arbitration in the following manner: Each party shall appoint two representatives who

(Testimony of George R. Harlan.)

may decide the issue by a three-fourths vote, which shall be final and binding on the parties, or failing to so agree, shall by a three-fourths vote elect a fifth person to act with them. The decision of the majority of the five members of this board of arbitration shall be final and binding on both parties.

6. Forty hours shall constitute a week's work.

7. The wage scale shall be as follows:

		Approximately Monthly earnings	
		40 hrs. week	48 hrs. week
Operators			
First year	66½c	\$115.00	\$150.00
Second year	69c	119.00	155.00
Third year	72c	125.00	162.44
Store Room and Platform			
First year	57½c	99.48	130.00
Second year	60c	103.80	135.00
Third year	62c	107.00	140.00

Delivery of Vegetable Ice

\$.0833 cents per ton on forty hour week.

Relief man shall be on the higher scale of wages of the two scales involved. Extra help and common labor, without experience, shall be paid 55c per hour on a forty hour week. There shall be no deductions other than directed by State, Federal and City authorities.

8. An employee having a year's record of employment with the Company will be granted two weeks' vacation with pay. No sick leave is granted but

(Testimony of George R. Harlan.)

each case will be decided on its merits by the Association and the Company.

9. The Association covenants that its membership has ratified this agreement and same has been approved by the officers of the Association.

10. This Agreement shall remain in full force and effect up to and including the first day of November, 1942, and continue thereafter from year to year unless one party notifies the other in writing ninety days in advance of the expiration date, of a desire to change the conditions of this agreement.

11. Overtime at the rate of time and one-half of regular pay shall be paid on all hours per day worked in excess of those set forth in paragraph six hereof.

12. It is understood and agreed that in the event mandatory laws or governmental rules or regulations applicable to, or in conflict with any of the provisions of this agreement, shall become effective and binding upon the parties hereto with respect to such conflicting provisions, this Agreement, shall be subject to modification to the extent required thereby.

13. No employee shall have his or her wages reduced or hours of labor increased by the execution of this agreement.

14. No member of the Association shall be discharged for upholding Association principles, or for doing committee work in the interest of the Association after regular working hours.

15. The Employer agrees to make payroll deduc-

(Testimony of George R. Harlan.)

tions for monthly dues and fees of the Association members in such amounts as the Association may direct, upon being furnished with membership authorization forms properly signed by the member and the Secretary of the Association, and such collections will be paid over to the Association monthly. Provided, however, that the Employer will be under no obligation to make a payroll deduction for any employee after the Employer has been notified in writing by the Secretary of the Association and the member involved that such employee no longer wishes deductions made. All such deductions so made by the Employer are to be considered as an advance payment of the dues of the Association member for the ensuing monthly period.

16. Any person becoming an employee of Employer shall within fifteen days become and remain a member in good standing of the Association.

17. No existing privileges which have hereto been extended to the employees shall be terminated by the signing of this agreement.

18. Employer shall have the right to discharge, without redress, for dishonesty, drunkenness, drinking on duty, or incompetence.

19. The Employer shall supply bulletin board space for the use of the Association in posting officially signed Association bulletins.

(Testimony of George R. Harlan.)

In Witness Whereof, the parties hereto have set their hands.

HOLTVILLE ICE AND COLD
STORAGE COMPANY

By F. A. WILLARD

Its President

HOLTVILLE ICE AND COLD
STORAGE COMPANY EM-
PLOYEES ASSOCIATION

By GEO. R. HARLAN

Its President

By TOM F. HERRING

Its Vice-President

By M. K. STOUT

Its Secretary-Treasurer

Mr. Ryan: I might say I shall write in the name of the signatories of the contract so it will appear who did sign it. [319]

Q. (By Mr. Ryan): Can you tell us, Mr. Harlan, if all employees of the company have been covered by the terms of that contract?

A. Well, all employees of the Association have, all the employees of the company don't belong to it.

Q. What employees of the company have not been covered by the contract?

A. The foremen and superintendents.

Q. Have office employees been covered?

A. One of the lower office employees was, yes.

(Testimony of George R. Harlan.)

Q. And how many office employees are there, do you know, or how many were there at the time the contract was entered into, if you know?

A. I guess Mr. Smith and one boy that worked part time.

Q. Was Mr. Smith covered by the contract?

A. No. [320]

Q. (By Trial Examiner Mouritsen): How was it straightened out? [323]

A. He left the employ of the ice plant.

Q. What did Mr. Willard say to you after you explained the matter to him?

A. I think Mr. Willard asked me what was wrong, if the boy—if they wanted to get rid of him. I told Mr. Willard there wasn't anything wrong with the boy, only he didn't want to join the Association, he was a good man.

Q. Then what did Mr. Willard say?

A. I don't remember that Mr. Willard said anything more to me about it, whether there was any more words passed or not between I and Mr. Willard.

Q. Did Mr. Willard tell you that he would take care of the situation?

A. Yes, I guess he did, he told me that.

Q. But you don't know whether he discharged the man or not following that conversation?

A. I presume he was, yes.

Q. Do you have a pretty good idea he did discharge him?

A. Yes.

(Testimony of George R. Harlan.)

Q. (By Mr. Ryan): This contract which ran for a year, as I understand it, this is in evidence as Board's Exhibit 5, was it renewed at the end of one year? A. Yes, sir.

Q. And how long will it run for now, since it has been renewed? [324]

A. I believe it is written practically the same, to run until—for one year or longer if both sides is satisfied.

Q. Were any negotiations had between the company and the Association with respect to continuing the agreement which was to terminate on November 1st, 1942?

A. There was some changes made in it on October 1st, 1942.

Q. Did you sit in on any negotiation at that time? A. Yes, sir.

Q. When did the negotiations occur for the renewal?

A. I think they occurred around—I guess they was in the first part of November they started, the negotiations, however, was—Mr. Willard was notified about the 1st of August, I believe, that we wanted to make some changes in the agreement. I think it was completed in the first part of November.

Mr. Smith: I have the contract of the 1942 agreement if you want it, Mr. Ryan.

Mr. Ryan: Perhaps we should have it in evidence also.

Mr. Smith: It is the original.

(Testimony of George R. Harlan.)

Mr. Ryan: I will have to withdraw it and make a copy.

Miss Reporter, will you mark this document as Board's exhibit next in order?

(The document referred to was marked as Board's Exhibit No. 8, for identification.) [325]

Mr. Ryan: Will counsel stipulate that I have marked for identification as Board's Exhibit 8 the document which is an agreement between the Holtville Ice and Cold Storage Employees Association and the Holtville Ice and Cold Storage Company covering wages, hours and working conditions, signed by F. A. Willard as president, for the company, and for the Holtville Ice and Cold Storage Employees Association by George R. Harlan, president; by George P. Drinkard, Jr., its vice-president; by M. K. Stout, its secretary-treasurer; and that the agreement by its terms became effective the 1st day of November, 1942.

I don't see where it says how long it is to run.

Mr. Whitelaw: Paragraph 10.

Mr. Ryan: And that paragraph 10 of the agreement sets forth the terms of its effectiveness.

Can that stipulation be had?

Mr. Smith: To the 1st of November, 1943.

Mr. Ryan: 1st day of November, 1943.

Mr. Smith: Yes.

Mr. Ryan: And to continue thereafter, from year to year, unless one party notifies the other in writing 90 days in advance of the expiration date, of a desire to change the conditions of this agreement.

(Testimony of George R. Harlan.)

Trial Examiner Mouritsen: Is that stipulated?

Mr. Smith: Yes. [326]

Mr. Petersen: One point I didn't raise on Board's 5, I am going to on Board's 8. It is an undated document, there is no date on it.

Trial Examiner Mouritsen: You mean no date of expiration?

Mr. Petersen: No date of expiration, there wasn't on Board's 5, either.

Trial Examiner Mouritsen: We can't change that fact, we have to accept the documents as they are.

Mr. Smith: I haven't seen it to read it, I doubt if Mr. Petersen has.

Mr. Ryan: I offer Board's Exhibit 8 in evidence.

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Whitelaw: We have no objection.

Mr. Smith: It is the original; I presume it may be entered with copies to be filed and the original returned to Mr. Harlan.

No objection.

Trial Examiner Mouritsen: I will receive it in evidence as Board's Exhibit 8.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 8, was received in evidence.) [327]

(Testimony of George R. Harlan.)

BOARD'S EXHIBIT No. 8

Agreement

This Agreement, made and executed this first day of November, 1942, by and between the Holtville Ice & Cold Storage Company, and its Successors and Assigns, hereinafter referred to as the Employer, the singular to include the plural, and the Holtville Ice & Cold Storage Company Employees Association, hereinafter referred to as the Association.

Witnesseth: That whereas both of the above-named parties desire to enter into an agreement respecting wages, hours, working conditions, and other matters affecting operation of that certain business known as Holtville Ice & Cold Storage Company, and situated in Holtville, State of California, and

Whereas, the Employer hereby is willing to recognize the Association as the representatives of the employees of the Holtville Ice & Cold Storage Company,

Now, therefore, for and in consideration of the mutual covenants to be kept and performed by each of the parties hereto, it is understood and agreed as follows:

1. The Employer recognizes the Association as the sole and exclusive representative of the employees of the Employer for the purpose of collective bargaining during the life of this agreement.

2. The Association agrees not to engage in sympathetic strikes.

(Testimony of George R. Harlan.)

3. The Association agrees that it will use all legal and legitimate means to see that contracts between its members and the Employer are strictly adhered to and faithfully kept.

4. There shall be no strike or other suspension of work by Association members during the life of this agreement.

5. It is mutually agreed that any differences that may arise between the parties to this agreement shall be settled by arbitration in the following manner: Each party shall appoint two representatives who may decide the issue by a three-fourths vote, which shall be final and binding on the parties, or failing to do so, shall by a three-fourths vote elect a fifth person to act with them. The decision of the majority of the five members of this board of arbitration shall be final and binding on both parties.

6. Forty hours shall constitute a week's work.

7. The wage scale shall be as follows:

		Monthly earnings	
	Rate per hour	40 hr. week	48 hr. week
Operators	85c	\$147.33	\$191.53
Store Room and Platform			
Shift Men	75c	\$130.00	\$169.00
*Other	67½c	117.00	152.10

* If on Company payroll when white ice season ends, a bonus of 7½c per hour for every hour worked during current vegetable shipping season will be paid, making the total pay average 75c per hour.

Delivery of Vegetable Ice

\$.0833 cents per ton on forty hour week.

(Testimony of George R. Harlan.)

Relief man shall be on the higher scale of wages of the two scales involved. Extra help and common labor, without experience, shall be paid 60c per hour on a forty hour week. There shall be no deductions other than directed by State, Federal and City authorities.

8. An employee having a year's record of employment with the Company will be granted two weeks' vacation with pay. No sick leave is granted but each case will be decided on its merits by the Association and the Company.

9. The Association covenants that its membership has ratified this agreement and same has been approved by the officers of the Association.

10. This agreement shall remain in full force and effect up to and including the first day of November, 1943, and continue thereafter from year to year unless one party notifies the other in writing ninety days in advance of the expiration date, of a desire to change the conditions of this agreement.

11. Overtime at the rate of time and one-half of regular pay shall be paid on all hours per day worked in excess of those set forth in paragraph six hereof.

12. It is understood and agreed that in the event mandatory laws or governmental rules or regulations applicable to, or in conflict with any of the provisions of this agreement, shall become effective and binding upon the parties hereto with respect

(Testimony of George R. Harlan.)

to such conflicting provisions, this Agreement shall be subject to modification to the extent required thereby.

13. No employee shall have his or her wages reduced or hours of labor increased by the execution of this agreement.

14. No member of the Association shall be discharged for upholding Association principles, or for doing committee work in the interest of the Association after regular working hours.

15. The Employer agrees to make payroll deductions for monthly dues and fees of the Association members in such amounts as the Association may direct, upon being furnished with membership authorization forms properly signed by the member and the Secretary of the Association, and such collections will be paid over to the Association monthly. Provided, however, that the Employer will be under no obligation to make a payroll deduction for any employee after the Employer has been notified in writing by the Secretary of the Association and the member involved that such employee no longer wishes deductions made. All such deductions so made by the Employer are to be considered as an advance payment of the dues of the Association member for the ensuing monthly period.

16. Any person becoming an employee of Employer shall within fifteen days become and remain a member in good standing of the Association.

17. No existing privileges which have hereto

(Testimony of George R. Harlan.)

been extended to the employees shall be terminated by the signing of this agreement.

18. Employer shall have the right to discharge, without redress, for dishonesty, drunkenness, drinking on duty, or incompetence.

19. The Employer shall supply bulletin board space for the use of the Association in posting officially signed Association bulletins.

In Witness Whereof, the parties hereto have set their hands.

HOLTVILLE ICE AND COLD
STORAGE COMPANY

By F. A. WILLARD

Its President.

HOLTVILLE ICE AND COLD
STORAGE COMPANY EM-
PLOYEES ASSOCIATION

By GEO. R. HARLAN

Its President

By GEO. P. DRINKARD, JR.

Its Vice-President

By M. K. STOUT

Its Secretary-Treasurer.

Cross Examination

Q. (By Mr. Yeager): Were you acquainted with this meeting [329] the employees had with the A. F. of L. here? A. No.

Q. Did you attend that meeting? A. No.

(Testimony of George R. Harlan.)

Q. In September, did you know that some of the boys went down to that meeting?

A. Yes, I knew some of them went down after they went.

Q. Now, prior to the time that you had this conversation with Mr. Osborne at your house, had there been any discussion between you and any of the other employees at the Ice Company regarding an employees union?

A. I think it had been mentioned, but I can't say when and where. [330]

Q. (By Mr. Yeager): Immediately prior to your talk with Mr. Osborne, were you acquainted with the employees unions?

A. Only what I had read in the newspapers.

Q. Had you talked with any of the employees of the Kramer Baking Company or of the Imperial Ice Company concerning it?

A. No, I hadn't; no.

Q. But you had gotten some information from reports in the newspapers? A. Yes.

Q. And this meeting that you say you heard about that took place in El Centro here, the A. F. of L.— A. Yes.

Q. —was that meeting before your conversation with Mr. Osborne or afterward?

A. That was before, I guess.

Q. How long before?

A. I don't know, possibly four or five days, maybe a week.

(Testimony of George R. Harlan.)

Q. After that meeting took place, did you have any conversation with any of the boys who had been to the meeting? A. Yes.

Q. Whom?

A. I talked to Mr. Fruhn and Mr. Standifer, and I don't know, I talked to several of the boys.

Q. Did you discuss with them these employees unions that [331] you had read about in the papers?

A. I did, I mentioned it to Mr. Fruhn and Mr. Standifer, both, I believe.

Q. And these discussions you had were before or after your conversation with Mr. Osborne?

A. That was after.

Q. That was after? A. Yes.

Q. Did you have any of those discussions with those men before your conversation with Mr. Osborne?

Mr. Ryan: I object, he has already said he didn't.

Mr. Smith: No, he didn't say that.

Mr. Yeager: These particular ones we are after, I am asking if he had any others.

Trial Examiner Mouritsen: I will permit him to answer.

The Witness: It had been mentioned around among the boys, some of them there, I couldn't say just who. I don't know that I had had a discussion myself, but I had heard it mentioned around.

Q. (By Mr. Yeager): Before you talked to Mr. Osborne?

(Testimony of George R. Harlan.)

A. Yes, it had been mentioned before I talked to Mr. Osborne; I heard it mentioned. I don't think I had any discussions myself about it.

Q. When Mr. Osborne came to your house, were you acquainted with him? [332]

A. Well, not personally, no.

Q. What did he indicate to you was the reason for his visit?

A. He was representing the Associated Farmers

Q. And what did he want of you, what did he ask to see you about?

A. He wanted some information on the union activity.

Q. Now, I think you testified in reply to Mr. Ryan's question that the question of employees union came up at that conversation, is that right?

A. Yes.

Q. Did that come up in response to questions on your part or did Mr. Osborne volunteer the information about employees unions?

A. I asked him.

Q. What did you ask him?

A. I asked him—I didn't ask him about the employees unions, I asked him what could be done, that I wouldn't have to go in the union, the A. F. of L.

Q. Did you ask him what the men could do that were employed there, or just what you personally could do?

(Testimony of George R. Harlan.)

A. I don't know how I directed the question to him now. I couldn't say that now.

Q. Did you indicate to him that you had read about these employees unions in the papers? [333]

A. After he mentioned them I did.

Q. What did he say about the employees unions?

A. I couldn't tell you exactly the words he said. He just explained the situation, the way they operated their associations.

Q. Did you ask him anything about the mechanics of forming one, how you went about it?

A. I did, yes.

Q. What did he say in response to that?

A. I think that I asked Mr. Osborne if he could get hold of me a copy of some of those, and he said he would try.

Q. Did he encourage you in any fashion to organize an employees union in preference to the A. F. of L.?

A. Not any more than the questions I asked him. [334]

Q. (By Mr. Yeager): Did he discuss with you the attempt of the A. F. of L. to organize the plant or did that come up at all?

A. Well, he asked me some questions about how many of the boys were joining the A. F. of L.

Q. Did he indicate any disapproval concerning that?

Mr. Ryan: I object—

Mr. Petersen: To which we object, it calls for a conclusion.

(Testimony of George R. Harlan.)

Trial Examiner Mouritsen: I prefer you would ask the witness what he said.

Q. (By Mr. Yeager): Did he ask anything about that subject?

A. Well, it was mentioned there, I couldn't say what was said.

Q. All right. And then you say he explained the mechanics of forming an employees union?

A. Yes.

Q. Did he say anything more to you about an employees union, other than the mechanics of forming it? Was there anything further on that subject that he mentioned?

A. Well, I don't know just how you want me to answer that.

Q. Just the truth, whatever it is.

A. What you want? [335]

Q. Do you recall anything—would you like to have the question read to you again?

A. Yes, sir.

(The question was read.)

A. I don't think there was, I don't remember.

Q. What was the next thing you did in regard to this employees union, after talking to Mr. Osborne?

A. Well, Mr. Osborne, I asked Mr. Osborne if he could get me a copy of some of those, and he did later on. Then I talked to some of the men.

Q. Now, as I understand it, you saw Mr. Osborne on the street here and he gave you a copy at that time, is that right?

(Testimony of George R. Harlan.)

A. After he was at my house I met him on the street, and that was in Holtville, and he gave it to me.

Q. Did he ask you how you were getting along with the Association, or anything at that time?

A. Well, I couldn't say what he asked me, we talked awhile, and what the conversation was, I don't know. I wouldn't be surprised if there was some things mentioned.

Q. Then what was your next step in regard to this Association?

A. Well, we went ahead and formed an association.

Q. You had a meeting at your house, did you?

A. Yes, we had a meeting at my house, and the Association [336] wasn't formed at that meeting, though.

Q. What did you discuss in regard to the Association at that meeting?

A. Well, we just got together there and just talked it over, the different things about it, and different points in it.

A. And as I understand it, Mr. Osborne came in to that meeting?

A. Yes, I asked Mr. Osborne to come over and explain it to us more thoroughly, and he was there, oh, I don't know, not very long, but he explained it some.

Q. What did he explain, Mr. Harlan?

(Testimony of George R. Harlan.)

A. The by-laws and constitution, how the associations were operating.

Q. Did he discuss with you at that meeting anything about whether you should join or form an employees union, or not?

A. I don't think he did, no.

Q. Did he discuss with you——

Mr. Ryan: Wait a minute. I object to that as calling for a conclusion. I should have objected to it, and I move to strike it.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Yeager): Was there any discussion at that meeting in regard to whether you should join up with the A. F. of L., or not? [337]

Mr. Ryan: I object, it calls for a conclusion.

Mr. Yeager: I asked if there was any discussion.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: Discussion amongst the men, there was, yes.

Q. (By Mr. Yeager): Did Mr. Osborne bring that up? A. No.

Q. Then the next meeting you had in regard to this Association was at Mr. Stout's house, is that right? A. That is right.

Q. And was Mr. Osborne at that meeting?

A. No.

Q. Then you, as I understand, met with Mr. Willard in regard to a proposal for wages and

(Testimony of George R. Harlan.)

vacations and so on? That was the next thing you did?

A. A proposal was given to Mr. Willard at that meeting, yes.

Q. He submitted counter proposals?

A. Yes, sir.

Q. And then you met as a body with him, did you? A. Yes, sir.

Q. Do you recall what part in the conversation Mr. Osborne played at that meeting?

A. At what meeting was that?

Q. At the meeting with Mr. Willard, at which these proposals [338] and counter proposals were discussed?

A. Mr. Osborne wasn't at—only one time Mr. Osborne was in there when there was a debate between us, and that wasn't—the membership wasn't in there at that time, the total membership.

Q. Who was in there?

A. Tom Herring and myself, and I don't know whether there was anyone else in there or not, there may have been.

Q. The only one of those meetings that you had with Mr. Willard, that Mr. Osborne was present at? A. Yes, sir.

Q. Do you recall what Mr. Osborne said at that meeting, approximately?

A. No, I couldn't recall that. I don't remember it.

Q. Had you acquainted him with your proposal and the counter proposal of Mr. Willard?

(Testimony of George R. Harlan.)

A. Not Mr. Osborne, no.

Q. Was anything decided at that meeting?

A. No.

Mr. Ryan: I object, calls for a conclusion. Move to strike it.

Trial Examiner Mouritsen: It isn't very clear. It doesn't mean very much.

Q. (By Mr. Yeager): Was any agreement reached at that time? [339]

A. When Mr. Osborne was there?

Q. Yes. A. No.

Mr. Ryan: I object to that as calling for a conclusion. Move to strike it.

Trial Examiner Mouritsen: I will deny the motion. I will overrule the objection.

Q. (By Mr. Yeager): Do you recall whether Mr. Osborne took any part in the conversations you had with Mr. Willard at that meeting?

A. He did take some part in it, but I couldn't tell you just what he said. He spoke some words, that is about all I know.

Q. Did he speak on your behalf or Mr. Willard's behalf?

A. Well, I couldn't say to that. [340]

Cross Examination

Q. (By Mr. Smith): Mr. Harlan, to your knowledge did Mr. Willard have anything whatever to do with forming the Employees Association?

A. Not to my knowledge.

Mr. Ryan: I object, it calls for a conclusion.

(Testimony of George R. Harlan.)

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): To your knowledge, was there ever a [341] contribution by Mr. Willard or by the Holtville Ice and Cold Storage Company to this Employees Association? A. No, sir.

Q. Or to any member of it for the benefit of the Association?

A. Not that I know anything about.

Mr. Petersen: I am going to object to that, the last phrase, for the benefit of it, since it has been proven that the Holtville Ice and Cold Storage Company is a contributor to the Associated Farmers.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): Mr. Harlan, did you ever hear Mr. Willard express an opinion about any union? A. I never.

Q. Mr. Harlan, did you, yourself, sign an application for the subsidiary of the A. F. of L. at one time? A. I signed an application, yes.

Q. Do you remember when that was?

A. I think that was the next day after the boys came over.

Q. After September 26th? A. Yes.

Q. Did you ever turn in your signed application? A. No, sir.

Q. And you never paid any money in? [342]

A. No, sir.

Q. (By Mr. Smith): Do you have a list of the

(Testimony of George R. Harlan.)

members that became members of your Employees Association prior to November 1, 1941?

A. The secretary has, I guess.

Q. Who was the first secretary?

A. M. K. Stout.

Q. Was there a membership list kept from the beginning?

A. Yes, sir. [343]

Cross Examination

Q. (By Mr. Petersen): What did you say to Mr. Osborne in the first meeting concerning getting into an A. F. of L. union, what was the substance of your language?

Mr. Whitelaw: Object to it, it has been answered in direct examination and cross examination.

Mr. Petersen: It is a foundation question.

Trial Examiner Muritsen: I will permit it.

The Witness: Well, I asked Mr. Osborne what I could do so I wouldn't have to go with the A. F. of L., what could be done about that. And he explained the association. [345]

Q. (By Mr. Petersen): About what date did you arrive at the fact that this contract, Board's 5, was successfully negotiated?

A. That was in November, 1941.

Q. What part of November?

A. I imagine the first or middle part of November, somewhere along there.

Q. Did you testify that you had meetings or negotiations during the first part of November in your previous testi- [346] mony?

(Testimony of George R. Harlan.)

Mr. Smith: I will object to that, the record shows just what he testified to.

Trial Examiner Moritsen: Well, the witness was there. There was some indefiniteness there that I would like to clear up.

Q. (By Trial Examiner Mouritsen): Let me ask you, do you know who drew up this document, Board's Exhibit 5, that is the first contract executed in the year 1941, do you know who drew it up?

A. The final contract?

Q. Yes.

A. No, I don't. Mr. Willard drew one up that I know, and the Association had one, but just which one made this particular one, I couldn't say.

Q. Did you have a lawyer helping the Association?

A. No.

Q. You had no lawyer that drew up any of your copies?

A. No.

Q. Were any of your copies drawn up on legal-size paper, such as this (indicating)?

A. Yes.

Q. Where did you get the paper?

A. We used copies of—got our copies from some of the other association copies. [347]

Q. Did you have them written up on the typewriter?

A. Yes, they were written on the typewriter.

Q. Who did that for the Association?

A. I don't know. My daughter did some of the typing, whether it was her that typed them up or not, I couldn't say.

(Testimony of George R. Harlan.)

Q. Did she type this one up (indicating)?

A. No.

Q. Did Mr. Willard type this up?

A. I rather think this was one of Mr. Willard's counter proposals and that it was decided on by us.

Q. This is executed as of November 1, 1941. Now, can you tell me whether it was executed on the date that it bears as of the first day of November, 1941?

A. No. When we were negotiating we come to an agreement that the contract would take effect when the final agreement was settled, if any, on the 1st of November.

Q. Do you have any idea how long those negotiations lasted?

A. Well, they lasted long about the middle of November, I imagine, the best I remember.

Q. Over how many days or weeks did they extend?

A. As I remember, I think they were started in the latter part of October, about three weeks, approximately.

Q. Did this agreement result in your receiving an increase in pay?

A. Yes, sir. [348]

Q. I think you said that the contract was to become effective as of the 1st of November, when the negotiations were concluded, is that correct?

A. Yes.

Q. Did you receive any pay back to the 1st of November, 1941, as a result of this contract?

(Testimony of George R. Harlan.)

A. Yes, sir.

Q. Was that given to you in a separate check?

A. I don't remember whether that was given to me in a separate check or all in one check, I couldn't say.

Q. But you are pretty certain that the contract wasn't—you say the negotiations on the contract weren't completed by the 1st of November, 1941?

A. No. [349]

Q. Before this contract went into effect, how much were you receiving per month?

A. Approximately \$117.

Q. And after it went into effect, how much were you receiving a month?

A. Made about \$162, I believe. [350]

* * * * *

The Witness: We received an extra week's vacation.

Q. (By Mr. Smith): You mean with pay?

Trial Examiner Mouritsen: The practice had been you received one week's vacation with pay and one without before the contract was signed, is that right?

The Witness: Whatever time you taken off, other than the one week, you didn't get any pay.

Trial Examiner Mouritsen: After that time you received two weeks' vacation with pay?

The Witness: After that time we received two weeks' [355] vacation with pay.

Mr. Smith: All right.

Q. (By Mr. Smith): What else?

A. I can't recall just now of any other thing.

(Testimony of George R. Harlan.)

Q. Was there any provision to get time and a half for overtime before the contract?

A. Oh, no.

Q. You received that also then?

A. We received that.

Q. Time and a half for all over 40 hours a week? A. Yes.

Mr. Petersen: To which we are going to object. At the time this contract was signed the laws of the United States made overtime for all overtime for 40 hours a week.

Trial Examiner Mouritsen: You weren't paid time and a half for overtime in excess of 40 hours a week before you signed the contract?

The Witness: Yes, we were paid time and a half before, but may I answer that in a little different way? Before we worked 40 hours a week and we were supposed to take off the rest of the time. However, sometimes it was necessary that somebody work, they got time and a half. On this contract we worked a regular day each week of time and a half, making it 48 hours a week, but time and a half for the extra 8 hours. Is that clear? [356]

Trial Examiner Mouritsen: I think so.

Did they agree in here you were going to get 48 hours every week?

The Witness: That is the way we were working.

Q. (By Trial Examiner Mouritsen): That is not the question. According to the contract were you guaranteed, say, a 48-hour week that you would

(Testimony of George R. Harlan.)

receive that much work each week, is that the way you understood it?

A. Yes, sir, that is the way I understood it. [357]

Redirect Examination

Q. (By Mr. Ryan): Mr. Harlan, I show you Board's Exhibit 8 [358] in evidence, and direct your attention to paragraph 16, and ask you whether or not the proposals which Mr. Willard submitted to you contained such a provision.

A. I think it did, yes, sir.

Q. The provision is the same, paragraph 16, of each of the exhibits 5 and 8. Was the provision which is in Board's Exhibit 5, which is paragraph 15—

Mr. Whitelaw: Is that the same provision, Mr. Ryan?

Mr. Ryan: Paragraph 15.

Mr. Whitelaw: Same provision as paragraph 16?

Mr. Ryan: No, no, they are not both 16. They are both 15.

Q. (By Mr. Ryan): The two contracts, paragraph 15 in both contracts, are the same, if I have read them correctly. Looking at paragraph 15 in Board's Exhibit 5, was that provision contained in the proposal of Mr. Willard to the association?

A. I think it was, on both the same; I wouldn't say positive.

Mr. Ryan: I have no further questions.

(Testimony of George R. Harlan.)

Recross Examination

Q. (By Mr. Smith): On that same line of questions, Mr. Harlan, as I understand it you first submitted a written contract to Mr. Willard, is that correct?

A. Yes, sir.

Q. And then he caused one to be typed up that contained the [359] same provisions, except as to the scale of wages, which he, in turn, proposed or offered to make, was that not true? In other words, he copied your contract, did he not, except as to the rate of wages?

A. I think——

Mr. Petersen: To which we are going to object, it calls for a conclusion of the witness.

Q. (By Trial Examiner Mouritsen): Tell us, Mr. Witness, I think your testimony so far has been that at the later meeting at Stout's home the matter of vacations, wages, hours was discussed, and that you set those things out in writing. Do you recall that testimony?

A. Yes.

Q. Now, were those the only matters that you presented to him, to Mr. Willard as your first proposal, or did it contain other things?

A. It contained practically the whole thing here of this. Some of it was a little bit different.

Q. Contained the whole what?

A. The whole of the contract.

Q. Were those matters also discussed at Stout's meeting at the meeting at Stout's home?

A. Well, verbally, yes, it was spoken of.

(Testimony of George R. Harlan.)

Q. Were they put down in writing to be presented to Mr. Willard? [360]

A. I don't get just what you mean.

Trial Examiner Mouritsen: Read the question.

(The question was read.)

The Witness: I think that they was, yes.

Q. (By Mr. Smith): Isn't it true that the whole contract was written up and presented to him?

A. Yes, we had a full contract when it was taken in, full proposal; practically the same.

Q. When he said that he presented a contract, it wasn't what he typed up, merely a copy of what you had previously presented to him, except changes made in the scale of wages? A. Yes.

Recross Examination

Q. (By Mr. Whitelaw): In other words, he used your form of the contract, did he, Mr. Harlan, that you presented to him? A. I presume, yes.

Q. You had those provisions there to which Mr. Ryan called your attention, the check-off system, paragraph 15, the payment of dues from wages and the union shop, that is, the requiring of members to become a member of your union within 15 days, were in your proposal? A. Yes.

Q. They were in your contract when you presented it to Mr. Willard? [361] A. Yes, sir.

Redirect Examination

Q. (By Mr. Ryan): Mr. Harlan, do you still have a copy of those original proposals which were submitted to Mr. Willard by yourself?

(Testimony of George R. Harlan.)

A. I wouldn't say, if we have this copy Mr. Stout has it. I haven't any of the papers myself. As secretary-treasurer he takes care of those. Whether he has it or not, I couldn't say.

Q. Would you check with Mr. Stout and any other representative of the association that might have them and attempt to get them and bring them here? A. I will.

Mr. Ryan: As counsel for the company, Mr. Smith, I ask you if you will make an effort to obtain the original proposals submitted by Mr. Willard to the association and bring them to the hearing.

Mr. Smith: I will find out if they have any such.

Trial Examiner Mouritsen: Anything further of this witness?

Mr. Petersen: Just one more question.

Recross Examination

Q. (By Mr. Petersen): Did Mr. Osborne raise any objection at the meeting where you were negotiating with Mr. Willard at which he was present, to the inclusion of paragraphs 15 [362] and 16 in Board's Exhibit 5?

Mr. Whitelaw: To which we object, it has been asked and answered by the witness.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Petersen): Look at 15 and 16 in Board's 5.

A. Was that the meeting that Mr. Osborne was with Mr. Willard when we were negotiating?

(Testimony of George R. Harlan.)

Q. Yes.

Mr. Whitelaw: We object to the form of the question; it assumes facts not in evidence.

Mr. Yeager: He said he was there with Mr. Willard when he came in.

Mr. Whitelaw: No objection then.

Trial Examiner Mouritsen: If there is no objection, answer the question.

The Witness: I can't remember the conversation that we had at that meeting.

Q. (By Mr. Petersen): Was there any objection raised on the part of Mr. Willard or Mr. Osborne toward the inclusion of paragraphs 15 and 16 in this contract?

Mr. Whitelaw: To which we object, it has already been asked and answered.

Trial Examiner Mouritsen: I will overrule the objection.

Mr. Whitelaw: It is compound. There is no showing that [363] paragraphs 15 and 16 were discussed at that meeting.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: I don't remember that this part of the contract was even brought up.

Q. (By Trial Examiner Mouritsen): That is, in the meeting with Mr. Willard.

A. It was with Mr. Willard.

Q. Did he ever say anything about those two provisions, paragraphs 15 and 16 of Board's Exhibit 5?

(Testimony of George R. Harlan.)

A. The first proposal I taken in to Mr. Willard he objected to—I don't remember about 16—about 15, but the one about 16 he objected to the first time that we went in.

Q. What did he say about 16?

A. He said he didn't like that idea. I don't know, remember the words he used, that was the expression, that he didn't like the idea of making that in there so every man had to belong to the association. And after we talked awhile I went on out. When we brought the other one up he told me that it would be all right.

Q. That was in the counter proposal he gave you back the next time, wasn't it?

A. Yes.

Q. It was in all the proposals you made after that time [364] and the counter proposals he made?

A. Yes.

Q. You don't recall that he said anything about paragraph 15 at any time?

A. I don't recall that.

Q. Has that paragraph or has that provision been observed since the contract was signed?

A. I think that has been in force ever since the contract was signed.

Q. After you submitted the first proposal to Mr. Willard, did you ever meet with Mr. Osborne after that time, other than this one occasion when he was present at the conference between the members of the association and Mr. Willard?

A. I don't remember, don't recall of the meeting.

(Testimony of George R. Harlan.)

Q. Are you a member of the Associated Farmers?
A. No, sir.

Q. Did you ever obtain from Mr. Osborne or did he ever give you a copy of any contract that any of these independent organizations had with any other companies?

A. We had a copy of a contract—no, I don't think we ever did, either. I don't remember seeing the contract that was with any of the other companies.

Q. I think you have said you never consulted any lawyer or attorney before you drafted the agreement that is Board's Exhibit 5, is that right? [365]

A. I don't believe that I did.

Q. Well, did any of the members of your association, to your knowledge?

A. I think that after the proposal was made out, it was taken to an attorney and we asked if it was O. K.

Q. Who was that? A. Mr. Whitelaw.

Q. I am merely asking you that because apparently this is in legal terminology. I believe you said that you wrote it.
A. We used——

Q. And that the document submitted by Mr. Willard was in the same form as your first proposal, is that right?
A. I think so.

Q. Was it drafted in this form by Mr. Whitelaw? In other words, this is written as a lawyer would write it, and I take it there aren't any lawyers employed among——

(Testimony of George R. Harlan.)

A. (Interrupting): No, there aren't any lawyers employed among us.

Q. Wasn't this document prepared by Mr. White-law?

A. I don't know who the document was prepared by. I think some of the boys perhaps had a copy of part of one, or one, or something, and who prepared it I couldn't tell you.

Q. Who would be in a better position to tell us who prepared this document, Board's Exhibit 5?

A. I don't know, I don't remember who. [366]

Q. Who took it to the attorney to have him approve it?

A. I was one of them that took it after it was written up, fixed up. The copy we had wasn't all printed out, we wrote it in, part of our stuff.

Q. After you wrote it, part of it, who finally drafted it and wrote it up in this form?

A. Well, the form was already made we had and I don't know who of the boys got the form.

Q. You have no idea?

A. No, I couldn't tell you.

Mr. Petersen: One more question. I am rather puzzled by the designation in Board's Exhibit 5 there, listing the classifications of operator. What is an operator? We haven't that designation so far as a description of the job down there. [367]

Trial Examiner Mouritsen: Isn't that a man who operates the crane, or something that pulls these cranes now?

The Witness: Yes, sir.

(Testimony of George R. Harlan.)

Q. (By Mr. Petersen): What else does the operator do? Does he work on the ice compressor?

A. Tends to them, yes.

Q. Before they discontinued Diesel operation did the can puller take care of the ice compressor then?

A. No.

Q. Who takes care of it then?

A. They had engineers.

Q. Who makes out the log sheet now?

A. The operator.

Q. Did they make out those log sheets before the Diesel engines were discontinued? A. No, sir.

Q. In the automatic floats, the treating of the water, who handles that now?

A. The ice pullers.

Q. Who did that previous to the change-over from Diesel? A. Engineers.

Mr. Petersen: That is all.

Recross Examination

Q. (By Mr. Smith): Along that same line, when the change-over was made from Diesel power to electric motors, is it [368] not true that the capacity of the can pullers was increased so that it handled twice as many? A. Yes.

Q. Than they did under the Diesel power?

A. Yes.

Q. Formerly picked up 6 cans and when the change-over was made they picked up 12 cans?

A. Yes.

Q. At one operation?

A. Yes, that is right. [369]

STANLEY HARRISON WELLS

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. State your full name, please, Mr. Wells.

A. Stanley Harrison Wells.

Q. And what is your address?

A. 635 Heil Avenue, El Centro.

Q. During the year 1941 what was your occupation, Mr. Wells?

A. Business representative for Local 898, International Brotherhood of Teamsters.

Q. Where were you working at that time?

A. In El Centro vicinity.

Q. During the months of September and October and November [370] of 1941, were you a business agent?

A. Not in September; October and November and forward

Q. Did you have occasion, as business representative of Local 898, to go to the Holtville Ice plant any time during the fall of 1941?

A. Yes.

Q. When did you have occasion to go there?

A. It was in the latter part of October, around the 28, on or before the 28th.

Q. Was that the first time you had ever been there?

(Testimony of Stanley Harrison Wells.)

A. No, I had been there two or three times previously.

Q. When you first went there, what was your business there?

A. I went there in company with Kenneth Lloyd to take a contract, proposal to the Holtville Ice and Cold Storage Company.

Q. Who is Kenneth Lloyd?

A. He was also a business representative of Local 898.

Q. About when was it you went there with him to bring a contract or proposal?

A. I believe it was about the 12th of October.

Q. Did you leave that proposal with anybody on that occasion?

A. Left it with Mr. Willard.

Mr. Ryan: Does the company have that proposal now?

Mr. Smith: I don't know. Herman thinks they have it [371] over there at Holtville.

Trial Examiner Mouritsen: Do you want it, Mr. Ryan?

Mr. Ryan: Yes, I would like to have it.

Mr. Smith: All right.

Q. (By Mr. Ryan): On the occasion that you left the proposed contract with Mr. Willard, did you have a conversation with him?

A. No, I don't believe so, I know I didn't.

Q. Thereafter did you have occasion to go back and talk with Mr. Willard after that?

A. Yes.

(Testimony of Stanley Harrison Wells.)

Q. When was that?

A. That was on October 28.

Q. Was anyone with you on that occasion?

A. Sir?

Q. Was anyone with you on that occasion?

A. Yes, Kenneth Lloyd.

Q. Where did you see Mr. Willard on that occasion?

A. In his offices at the Holtville plant.

Q. Was anyone present besides Mr. Willard representing the company?

A. I believe Mr. Smith was also present; I believe that is his name. [372]

Q. Herman Smith?

A. Mr. Willard's secretary or office manager, or something.

Q. Did you have a conversation on that occasion with Mr. Willard? A. Yes.

Q. Will you tell us what you said and what Mr. Willard said?

A. Well, Mr. Lloyd did the preliminary talking before I had anything to say. And then we had heard from some of our members at——

Mr. Smith: Just a minute. I object to what you heard from the members.

Trial Examiner Mouritsen: Yes. Tell us what was said.

The Witness: I brought the point out that we wanted to be sure, in the event of the failure of our organizational campaign, that the members that belonged to our organization at that time

(Testimony of Stanley Harrison Wells.)

would go back according to their seniority, go back to work, and I believe that Mr. Willard said the union didn't enter into it; they would go back in that same order.

Q. According to seniority?

A. According to seniority. And also I asked him if we could negotiate, what the reason was we couldn't negotiate on the contract. He said he would have to tell the Board of Directors together. And we said, "Well, when could that be [373] arranged. We have been trying for some time to negotiate the contract." We had a majority in our organization, majority of their personnel, exclusive of the office help. He said, well, he didn't know whether it was important enough to call a Board of Directors meeting for. And we asked him his position in the company. He said he was chairman of the Board of Directors.

Q. (By Mr. Ryan): Did he say anything further?

A. Not that I can recall right at the moment.

Q. Did he say anything about whether or not you represented a majority?

A. Yes, we stated that—Kenneth Lloyd and myself stated that we represented a majority of his personnel on application, belonging to our organization. And he said that is well and good, but he didn't have time at the present, at that time, to do any negotiating until such time as he had called a meeting.

Q. Called a meeting of what?

(Testimony of Stanley Harrison Wells.)

A. His Board of Directors.

Q. Did he indicate when he would do that? [374]

Mr. Ryan: Will the respondent's counsel stipulate that under date of January 8th, 1942—I think it is—the union, Local 898, wrote a letter to Mr. Willard? I believe you admit that in your answer.

Mr. Smith: I think that is correct. We have it on January 12th, the letter was received. I suppose that is the letter of date of January 8th. [377]

Mr. Whitelaw: We know nothing about it, never saw the letter, don't know the contents.

Mr. Ryan: Miss Reporter, will you mark this as Board's exhibit next in order?

(The document referred to was marked for identification as Board's Exhibit 9-A.)

Mr. Ryan: Counsel, I have here a copy, I think, of the letter which was written to Mr. Willard by the union, which I have had marked for identification as Board's Exhibit 9-A.

Mr. Smith: It should be January 8th, 1942.

Mr. Ryan: Just an error in typing, I guess.

(The document referred to was marked for identification as Board's Exhibit 9-B.)

Mr. Ryan: I also have here what purports to be Mr. Willard's answer to the letter. I have had it marked as Board's Exhibit 9-B.

Mr. Smith: I will stipulate those are correct copies of the letter of Mr. Willard, the letter Mr. Willard received, and his reply, except the date on

(Testimony of Stanley Harrison Wells.)

your letter to the ice company should be dated January 8th, 1942, instead of 1941.

Mr. Ryan: Is it permissible for me to change it in ink to 1942?

Mr. Smith: Surely.

Mr. Ryan: I offer in evidence then what has been marked [378] and agreed to as Board's Exhibit 9-A, which is a letter addressed to the Holtville Ice and Cold Storage Company under date of January 8th, 1942, by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers Local 898, by the secretary-treasurer, and a copy of the letter which was—Mr. Willard's reply to the union. That is under date of January 23, 1942, from the Holtville Ice and Cold Storage Company, by Mr. Willard. I offer them in evidence.

Trial Examiner Mouritsen: Do I understand that it is stipulated these are true and correct copies of the originals?

Mr. Smith: Yes.

Mr. Whitelaw: We can't stipulate. We have no objection to the introduction.

Trial Examiner Mouritsen: It is stipulated that this one, Board's Exhibit 9-A, is to the company, was received by the company on or about January 12, 1942?

Mr. Smith: That is correct. [379]

Mr. Smith: The letter of January 12th, 1942, was received by the ice company probably not on the 12th, but within [380] a few days thereafter.

(Testimony of Stanley Harrison Wells.)

It was sent registered and held in the postoffice a few days.

Mr. Ryan: Board's Exhibit 9-B is a copy of the company's answer, which was sent to the local.

Mr. Smith: That is right.

Trial Examiner Mouritsen: I will receive them in evidence as Board's Exhibits 9-A and 9-B.

(The documents heretofore marked for identification as Board's Exhibits 9-A and 9-B were received in evidence.)

BOARD'S EXHIBIT No. 9-A

Chauffeurs, Teamsters and Helpers, Local Union
No. 898

Imperial County California and
Yuma County Arizona

[Cut]

Ray E. Magness

Secretary-Treasurer

[Union Label]4

Office:

795 Main Street

El Centro, Calif.

Phone 96

Affiliated with the I. B. of T. C. W. & H. of A.,
A. F. of L.

January 12, 1942

Holtville Ice and Storage Co.,

Holtville, California

Attention Mr. Willard

Gentlemen:

In October, 1941, we presented a contract to you and requested that you bargain. Repeated efforts have been made to get you to meet with us, without avail.

(Testimony of Stanley Harrison Wells.)

Please be advised that we are demanding that you meet with us, and request that you notify us the date which will be convenient for you to meet with us.

Very truly yours,

INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS,
CHAUFFEURS, WARE-
HOUSEMEN, AND HELP-
ERS, LOCAL 898

By RAY E. MAGNESS

Secretary-Treasurer

BOARD'S EXHIBIT No. 9-B

Copy

January 23, 1942

Mr. Ray E. Magness
795 Main Street
El Centro, California

Dear Sir:

Your letter of the 12th just reached me yesterday.

For your information all of our employees belong to a local union which we recognize as the bargaining agents and have made an agreement with them to that effect.

Yours truly,

HOLTVILLE ICE & COLD
STORAGE CO.

By
F. A. Waillard

(Testimony of Stanley Harrison Wells.)

Mr. Ryan: I have no further questions. [381]

HENRY G. MILLER,

called as a witness by and on behalf of the Board,
having been first duly sworn, was examined and
testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full
name, Mr. Miller? A. Henry G. Miller.

Q. Where do you live? A. Burbank.

Q. California? A. Yes.

Q. Mr. Miller, did you ever live in El Centro
County—or Imperial County? A. I did.

Q. When did you live in Imperial County?

A. From 1908 until some time in '40, 1940.

Q. Were you ever employed by Holtville Ice
and Cold Storage Company? A. I was.

Q. And how long were you employed by that
company?

A. Oh, I think it was some 14 years.

Q. In what capacity?

A. As ice puller and engineer.

Q. Were you employed by that company in Sep-
tember of 1941? A. September, 1941, yes.

[400]

Q. And October, 1941? A. Yes.

Q. Did you have occasion to join any labor or-
ganization while you were employed by the com-
pany?

(Testimony of Henry G. Miller.)

Mr. Whitelaw: Objected to, calling for an opinion and conclusion of this witness; the record is the best evidence.

Mr. Ryan: I will ask him if he made application to join any labor organization.

The Witness: I did.

Q. (By Mr. Ryan): What organization did you make application to join?

A. The A. F. of L.

Q. What branch of the A. F. of L.?

A. Teamsters, I believe.

Q. When did you make such application?

A. First part of October, I wouldn't know the date.

Q. 1941? A. Yes.

Q. Where were you when you made the application? A. At El Centro.

Q. Where in El Centro?

A. At the Union Temple.

Q. A. F. of L. Labor Temple?

A. A. F. of L. Union Temple.

Q. Do you know Keith Metz? [401]

A. I do.

Q. After you had been at the Labor Temple and made application for membership in the Teamsters and A. F. of L., did you have occasion to see him?

A. Yes, I saw him, he looked me up.

Q. When did you do that?

A. It was either one or two days after I made application at the Union Hall.

(Testimony of Henry G. Miller.)

Q. Where did Mr. Metz look you up?

A. At El Centro.

Q. Where were you in El Centro at the time?

A. At the Chevrolet Garage.

Q. Did you have a conversation with him there?

A. Yes.

Q. Went in the garage when you got there, or just how did it come about that you met at the garage?

A. Oh, I was in the garage and he came in there and was looking for me.

Q. Was anyone present when you and he had the conversation there?

A. We didn't converse in the garage, he wanted to speak to me and we stepped outside and carried on our conversation in his car. [402]

Mr. Ryan: Is it stipulated that Keith Metz was a director of the Associated Farmers of Imperial County in October, 1941?

Mr. Smith: So stipulated.

Trial Examiner Mouritsen: Mr. Whitelaw?

Mr. Whitelaw: Yes.

Trial Examiner Mouritsen: Very well. [406]

Q. (By Mr. Ryan): Will you go ahead and relate the conversation, telling what you said and what he said, if anything? [407]

A. He wanted to speak to me, as I said, and we went to his car and sat down, and he began to tell me he had heard I tried to join the union. He advised me not to join the union.

Q. Tell what he said.

(Testimony of Henry G. Miller.)

A. He said that as a landowner in Imperial County it wouldn't pay me to join the union, it would impair my credit, and that Mr. Williard was glad to have us boys form a union at the ice plant, and if they could be of any assistance to us, they would be glad to help us.

Q. Who would be glad to help you?

A. Referring to the Associated Farmers.

Mr. Whitelaw: Now, the form of the answer is not responsive; it is a conclusion of this witness, not the conversation related.

Trial Examiner Mouritsen: Now, Mr. Witness, what did he say about who would be willing to help you? Did he make that any more definite than you have so far indicated?

The Witness: Well, he—yes, he said the Associated Farmers and he also wanted to take me to see Mr. Hugh Osborne and have a talk with him, and they would do all they could to help us organize the union of our own.

Trial Examiner Mouritsen: You say he wanted to take you, did he say he would take you to Mr. Osborne?

The Witness: He offered to take me, and I didn't want [408] to go.

Q. (By Mr. Ryan): About when did this conversation take place? You said early in October. About what part of October?

A. I can't tell you the exact date, it was right about the 10th, just as near as I can tell. Might

(Testimony of Henry G. Miller.)

have been the 9th or the 11th; it was about that time.

Mr. Whitelaw: Just a minute. For the purpose of the record, we wish to move to strike all the testimony of this witness out regarding the conversation, on the ground it is incompetent, irrelevant and immaterial, no proper foundation having been made, no showing Keith Metz was authorized on behalf of anybody except Keith Metz to speak to Mr. Miller.

Trial Examiner Mouritsen: I will deny the motion. No authority to speak for Mr. Willard.

Mr. Whitelaw: I said of the Associated Farmers.

Mr. Smith: I will make the same request, that the evidence be stricken on behalf of the respondent Ice Company, on the ground that Mr. Metz never had contact with Mr. Willard, or had any authority to speak for Mr. Willard.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Ryan): Were you an employee of the Holtville Ice and Storage Company at the time of this conversation? A. Yes. [409]

Q. How long did you continue as an employee of the company after this conversation?

A. At the time this conversation took place, I was on my vacation, and I left for Burbank either the day after, or two days after this conversation took place and got a job at the Lockheed Company and went to work there, and never came back.

(Testimony of Henry G. Miller.)

Q. How long was your vacation for?

A. Two weeks. [410]

Redirect Examination

Q. (By Mr. Ryan): Mr. Miller, at the time you went up to the Labor Temple, as you have just told us, to make application for membership in the Teamsters of the A. F. of L., did you sign anything?

A. Signed an application blank there. [412]

Q. There has been some testimony in the record so far, Mr. Miller, that this occurred on or about the 26th of September, 1941. Would you disagree with that date?

A. Well, it could be possible.

Q. You can't say definitely?

A. I can't state definitely, I could probably look back, trace through some records that happened at the same time, but I couldn't trace this date other than by just guessing at it.

Trial Examiner Mouritsen: Those are all the questions I have.

Q. (By Mr. Smith): Mr. Miller, was the ice plant in operation, making any ice, at that time?

A. No.

Q. How long had the plant been closed down when you left on your vacation?

A. Oh, the best I can recall, about four months. [416]

Q. Is it true, Mr. Miller, that each summer the plant shut down after the carrot season? Is that true?

(Testimony of Henry G. Miller.)

A. Yes, after the clear ice season, we would always make a little clear ice; this particular season we didn't. [417]

Q. There were times, however, that you were laid off, were there not?

A. Yes, I was laid off, oh, I don't remember how many times, for a short period, but usually I worked on some repair job during——

Q. Do you know what date it was that a representative of the Ice Company came to your home in Holtville and talked to your wife and tried to get you to come back?

Mr. Peterson: We object, it has already been asked and answered.

Trial Examiner Mouritsen: He is trying to fix the date. I will permit it.

Mr. Smith: I am asking the date.

The Witness: It must have been some time the latter part of October, I went to work for Lockheed the 20th of October, and it happened—they requested me to go back to work after I went to work up there, so it happened some time after the 20th.

Q. I see. Your wife sent that word to you, did she?

A. Yes. [418]

PERRY THOMAS BLANKENSHIP,

called as a witness by and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): State your full name, please, Mr. Blankenship.

A. Perry Thomas Blankenship.

Q. What is your address?

A. It is 1203 Airport Avenue, Downey, California.

Q. Did you ever live in Holtville, California?

A. I did.

Q. When did you live in Holtville?

A. Well, I moved there in May in 1940, and continued until—well, my wife and children stayed there until after school was out in June in '42.

Q. Were you ever employed by Holtville Ice and Cold Storage Company? A. I was.

Q. When were you first employed by that company?

A. Went to work in May, May 4th, 1940.

Q. And in what capacity?

A. I went to work in the storeroom at that time.

Q. What were your duties in the storeroom, briefly?

A. I was dragging ice or putting ice out on the chain for the front platform, and loading the cars out for El Centro. [423]

Q. Are cars the same as trucks?

A. No, it was railroad cars.

(Testimony of Perry Thomas Blankenship.)

Q. I see. Are there railroad cars that go by this ice plant? A. Yes, sir.

Q. Holtville ice plant? A. Yes, sir.

Q. Where is the ice taken in the railroad cars?

A. Off the back side of it, out of the storeroom, off a chain runway, chain goes down on a switch.

Q. And then what happened to the car after you put the ice in it?

A. Well, close it up and ship it, I don't know where—to El Centro, I don't know where it went to.

Q. How long did you remain in the storeroom, approximately, if you can't remember exactly?

A. Well, I was in and out of the storeroom the balance of the season. I went in as help maintenance in the engine room part of the time during that time.

Q. Over what period of time did that extend, when you were in the storeroom part of the time and helping maintain the engines part of the time?

A. How long did——

Q. How long did that continue?

A. Well, let's see, I think that extended up into July of [424] that year.

Q. 1940? A. Yes.

Q. Then what did you do, Mr. Blankenship?

A. I was laid off through the summer.

Q. Then did you return to the employ of the company? A. I did.

Q. How did you get back to work, what arrangements were made for you to get back to work, if any?

(Testimony of Perry Thomas Blankenship.)

A. I went down there and I was told I would go back to work that fall.

Q. Who told you that?

A. Pete Pool, the superintendent.

Q. When did he tell you that, Mr. Blankenship?

A. That was—that is the time I was laid off in the spring before.

Q. In July? A. In July.

Q. Did he tell you approximately when they would be needing you again?

A. Well, no, he didn't set any certain date, he just said when they started up.

Q. When did you actually begin working there in the fall again, following the July layoff?

A. That was on the 15th of September, I believe it was. [425]

Q. What job did you start doing at that time?

A. Pulling ice.

Q. How long did you continue as an ice puller?

A. Well, I pulled ice for a couple of months, continued pulling ice.

Q. Then what did you do?

A. And I went from that then, as an operator or helper, relief operator, an ice puller, relief for both ends of it.

Q. Relief engine operator?

A. Relief engine operator and relief ice puller.

Q. Who were the other ice pullers that year while you were there?

A. There was Mr. Miller and Herman Pool, Merl Stout.

(Testimony of Perry Thomas Blankenship.)

Q. Those are engine operators?

A. You mean——

Trial Examiner Mouritsen: I think he said ice pullers.

The Witness: Ice puller?

Trial Examiner Mouritsen: Yes.

The Witness: Oh. Slim Gettle, I don't know his first name. And I know the name, but I can't think of it.

Q. Well, after you began to be a relief ice puller and a relief engine operator, how long did you continue in that capacity?

A. Well, until they closed down.

Q. How long was that? [426]

A. That was in July, I think, along the 11th of July or the 14th, I don't remember just which.

Q. Of 1941? A. 1941, yes, sir.

Q. Then what did you do?

A. I worked there then for a while as just general help, around the plant.

Q. Doing what?

A. Well, taking the—tearing out the old motors, the Diesel motors, and worked in the storeroom, putting up—repair work in there.

Q. That was when they were taking out the Diesel motors and putting in electrical equipment?

A. That is right.

Q. How long did that keep you busy, working around like that?

A. Let's see, I left there—I think that lasted about three weeks. I don't remember the date.

(Testimony of Perry Thomas Blankenship.)

Q. Then what did you do?

A. I didn't do anything at the present time, for about a couple of months, I didn't do anything.

Q. When your work around there, helping tear out the motors and working around in the storeroom ended, did anyone tell you what to do from then on?

A. No. [427]

Q. What did you do, just stop and start staying home, or what was said to you about it?

A. I looked for work around all the time that I was down——

Q. I mean, did you talk to your boss or your superintendent or any representative of the company, when you had the work all finished up?

A. Yes, I asked them what—was there any chance of me getting back on, so I got no reply to it, it wasn't answered at that time.

Q. I am still talking about this time after your season's work had just about been completed, and you say you continued to work around, helping tear out the Diesel motors and work around in the storeroom. I wanted to know what happened when you got through with this extra work. Did somebody tell you, "That is all the work there is for you now for awhile." Or what happened?

A. They came through and laid me off, they told me they didn't need me any longer at the present time.

Q. Who told you that?

A. Pete, Mr. Pool, the superintendent.

(Testimony of Perry Thomas Blankenship.)

Q. Did he say anything else?

A. Not at that time.

Q. And that would be about three weeks after the regular plant operations were closed down in the summer?

A. That is right. [428]

Q. Then what did you do?

A. Well, I hired to the man that had the contract to finish up the work on the storeroom—not store-room, but the outside of the buildings.

Trial Examiner Mouritsen: Who is that? Was that York?

The Witness: York—no, that wasn't his name.

Mr. Smith: Manchester, maybe?

The Witness: Manchester. I worked for him then around for a while and when that was ended, I didn't do nothing.

Q. (By Mr. Ryan): And did you have occasion to join a labor organization in the fall of 1941, or make application for membership in one?

Mr. Whitelaw: Just a minute. You have got a compound question there, Mr. Ryan.

Trial Examiner Mouritsen: That is right.

Mr. Ryan: I will withdraw it.

Q. (By Mr. Ryan): Did you have occasion to make application for membership in any labor organization in the fall of 1941?

A. I did.

Q. When did that happen, when did you do that?

Mr. Whitelaw: Mr. Examiner, aren't the records here pretty clear already as to Mr. Blankenship?

(Testimony of Perry Thomas Blankenship.)

Trial Examiner Mouritsen: My recollection is that it was [429] on the 26th of September, and as I recall there was some reference to this man in the records that were read yesterday as to the payment; it is unnecessary to go into that. If I am incorrect——

Mr. Ryan: I think you are right.

Mr. Whitelaw: He is the top man on this list. It is useless to encumber the record.

Trial Examiner Mouritsen: Well, this would indicate the payment in dues, I would like to know if he made application at the time these other men did in September.

Q. (By Mr. Ryan): When did you make application for membership?

A. Well, it was the same time as the rest of them did, I don't remember what date it was.

Q. Where were you when you made application for membership?

A. At the Union Hall, Temple.

Q. Who was with you?

A. Well, there was Mr. Herman Pool and Mr. Miller, Merl Stout, Henry Fredenburg and Tom Herring, Art Standifer, Lester Hart.

Q. You all went down together, didn't you?

A. Yes, sir, that is right.

Trial Examiner Mouritsen: I think the evidence so far shows that was on or about September 26, 1941.

Would you disagree with that date? [430]

(Testimony of Perry Thomas Blankenship.)

The Witness: No, sir, I wouldn't.

Q. (By Mr. Ryan): Then after you had made application for membership in this union,—what union was it?

A. A. F. of L., Teamsters A. F. of L.

Q. Did you thereafter, after this making of application for membership, did you have a conversation with Pete Pool at any time?

A. Yes, several times.

Q. How soon thereafter did you have your first conversation with him?

A. Well, I think it was about a couple of days.

Q. Where were you at the time?

A. At the plant.

Q. And how did you happen to be at the plant?

A. Well, I was working again for a few days for Mr. Manchester at the time.

Q. Doing some construction work around there?

A. That is right.

Q. Well, what were you doing at the time you had this conversation with Pete, just where were you, at the plant?

A. The first time I was in back of the plant. I was pulling some nails out of some lumber at that time.

Q. Was anyone else present when you and Mr. Pete Pool had your talk on that occasion?

A. No, sir. [431]

Q. Will you tell us what Mr. Pool said and what you said.

(Testimony of Perry Thomas Blankenship.)

Trial Examiner Mouritsen: Do you have the time fixed, approximately?

Mr. Ryan: I understood him to say a few days. Maybe I am wrong.

The Witness: Two or three days.

Mr. Smith: I believe I am going to object to this. The witness said he stopped his work for the Ice Company some time in July or early August, and he had not worked for them for some time. He had gone to work for Manchester in the meantime.

The Witness: That was for Mr. Manchester I was working at the last time.

Mr. Smith: That is right. There is no showing that he was an employee of the Ice Company at the time.

Trial Examiner Mouritsen: I will overrule the objection. I am interested in whether he applied for reinstatement, as the allegation is that he never did.

Tell us what you said and what Pool said.

Q. (By Mr. Ryan): Go ahead and tell us what was said.

A. I don't know all of it, first he walked up to me and asked me, he said, "Well, I heard you have joined the union, you signed up with the union." I said, "Yes, I guess that is true." And he said then that the union didn't have a chance because the men of the class that done all the hiring [432] had a jump ahead of the unions, the labor organization class of people at all times had a jump ahead of them, didn't

(Testimony of Perry Thomas Blankenship.)
think they would ever make a success out of it. From there on I couldn't tell you exactly what was said.

Q. Is there any more you can state about that conversation? Is that all?

A. No, sir, not at that time.

Q. Did you thereafter have any talk with Mr. Pool or any representative of the company about getting, starting back to work?

Mr. Whitelaw: Now, we are going to object to the leading question, Mr. Ryan, it is absolutely leading.

Trial Examiner Mouritsen: Yes. You can ask him if he ever reapplied or applied.

Mr. Ryan: I don't think that is necessary, to ask if he reapplied, I think it is pretty well established by this time he was still an employee of the company. He might have been off temporarily because of slack work.

Mr. Smith: I can't agree with counsel's theory on that.

Trial Examiner Mouritsen: Let's not argue about it. Let's find out if this man ever spoke to anybody about resuming work there or starting work there again.

Q. (By Mr. Ryan): Did you thereafter have any further conversation with Pete Pool? [433]

A. I was off and on down there several times, but the conversation, biggest part of the time, or none of the time, wasn't in any way connected with that.

Q. With what?

(Testimony of Perry Thomas Blankenship.)

A. The union or the ice plant at the time, but later on, just before they started up, I asked him——

Q. When was that?

A. I don't remember just what time that was.

Q. About when was it, can you fix it, approximately?

A. They was figuring on starting on the 15th of October, I believe it was, or September, and I asked for a job, asked if I could get back on. Well, he never did answer me.

Q. Who did not answer you?

A. Mr. Pool.

Q. Where were you on that occasion?

A. I was standing in by the large compressor in the compressor and engine room.

Q. At the Holtville ice plant? A. Yes.

Q. Was anyone present, other than you and Mr. Pete Pool?

A. Well, the men that was working on the compressor from the Los Angeles company up there, I forget his name.

Q. Was that the first time, preceding the starting up, that you asked him, or had you had other conversations?

A. Well, no, not in regardance of working there. [434]

Q. Did you thereafter have any further conversation with Pete Pool or any representative of the company? A. No.

Trial Examiner Mouritsen: Well, do I under-

(Testimony of Perry Thomas Blankenship.)

stand your testimony to be that you asked Pete Pool about going back to work on this one occasion?

The Witness: Yes.

Trial Examiner Mouritsen: Then you can't fix the time very definitely and he didn't say anything to you, he didn't answer you?

The Witness: No.

Q. (By Trial Examiner Mouritsen): What did he do, just walk off?

A. No, he turned the conversation over to this man that was working on the compressor, as if he didn't hear me.

Q. Did you then repeat your request or say anything more about it?

A. Yes, I asked the second time. I decided there was no use, and I didn't ask any more.

Q. Was that the first time that you had asked him to get back to work? A. Yes.

Q. Can you fix this time when you asked Pete Pool for a job and he didn't answer you? Was that before or after you had signed this application blank in the union? [435]

A. That was after.

Q. About how long after?

A. Well, I don't know

Q. I think you said something about the beginning of a season. What did you see at the plant that made you think that that was the beginning of a season?

A. The beginning of the season of starting of making ice, starting the machinery to making ice,

(Testimony of Perry Thomas Blankenship.)

that is what they usually called the beginning of a season.

Q. Had they done that before the time you asked Pete Pool for a job?

A. Which do you mean——

Q. When you last asked him and he didn't give you any answer.

A. I don't know just how you——

Q. What I am trying to find out as nearly as I can, is what time this conversation with Pete Pool took place. Let's try it this way: I think you said this other man from some Los Angeles company was still fixing the compressor there.

A. That is right.

Q. Let me ask you if they were still working on the compressor, this Los Angeles company, when they started the season?

A. No, they had to fix that before they started the season, [436] before they started making ice. And I asked him when they started could I be put back on.

Q. Well,—— A. I——

Q. Pardon me. Did you have something further?

Mr. Whitelaw: You might find out if he was still working for the Manchester people at that time.

The Witness: I wasn't working for anyone at that time.

Q. (By Trial Examiner Mouritsen): It just happened this Manchester man and Pete Pool were

(Testimony of Perry Thomas Blankenship.)

together when you were talking to Pool, is that right?

A. I wouldn't say he was a Manchester man. He was a York Ice Company man. I walked up on one side and was standing there where this man was working, and Pete Pool walked up on the other side, or Mr. Pool, I call him Pete.

Q. Do I understand your testimony to be that they had not started to manufacture ice at that time? A. That is right.

Q. Well, do you know how long it took place before they actually did start to manufacture ice?

A. No, I don't, but it was some days after they had first set a day to start and then they didn't get started then. They didn't get started the first date they had set, and it was something like ten days later before they did get started. [437]

Q. When you asked Pete Pool, on this occasion, did you expect to go to work right then or were you merely asking him about the future?

A. I was asking about the future, when they started their production of making ice there. [438]

Cross Examination

Q. (By Mr. Smith): Mr. Blankenship, you went to work in May, 1940, and you worked through then until July, '40, the first time?

A. That is right.

Q. And as I understand your testimony, when you were laid off at the time the plant shut down in July, '40, you were told about the time you were laid off, that you could come back in the fall?

(Testimony of Perry Thomas Blankenship.)

A. If I was there, yes.

Q. If you were there when they started up?

A. Yes.

Q. And then in the fall, I suppose, you went back and applied for reinstatement?

A. That is right.

Q. And you were put on. During the year you acted as an engine operator part of the time, did you?

A. Engine operator and relief ice puller, both. [439]

Q. (By Mr. Smith): Well, did Pete ever tell you that [444] doing away with the Diesel engines, he didn't know whether there would be work for you the next fall?

A. He didn't say exactly that, he said he would cut out some of the operators.

Q. He said he would have to cut out some of the operators?

A. He said they would cut out some of the operators and make the man that operated the ammonia pumps, would pull the ice. [445]

HERMAN FRUHN,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. State your full name, please.

(Testimony of Herman Fruhn.)

A. Herman Fruhn.

Q. F-r-u-h-n? A. Yes.

Q. Where do you live, Mr. Fruhn?

A. Holtville.

Q. Were you ever employed at the Holtville Ice & Cold Storage Company? A. Yes.

Q. When were you first employed by that company and how long did you continue to work for them? A. In 1929, in July.

Q. And how long did you continue to work for the company?

A. You mean how long I worked for them? [452]

Q. Yes. A. I have worked until 1940.

Q. 1940? A. Yes.

Q. Might it have been 1941?

A. '41, I mean; '41.

Q. What was your job when you began to work for the company in 1929, or about that time?

A. Ice puller.

Q. How long did you continue to be an ice puller for the company?

A. Always, I pulled ice always.

Q. That was what you were doing up to the time your employment terminated? A. Yes.

Q. While you were employed by the Holtville Ice & Cold Storage Company, did you have occasion to make application for membership with any labor organization?

A. No, only this time that we was going in the union.

(Testimony of Herman Fruhn.)

Q. When was that?

A. That was in September. '41, in September.

Q. September of 1941? A. Yes.

Q. And on that occasion where did you go, to the union? A. Local union. [453]

Q. Where, here in El Centro?

A. In El Centro, yes.

Q. Is that the A. F. of L. Labor Temple?

A. A. F. of L. Labor Temple.

Q. Did you go with other employees or by yourself?

A. No, we was going all together, 11 of us.

Q. Was that about the 26th of September, 1941?

A. Yes.

Q. Did you sign any paper or document when you made application for membership in the union on that occasion? A. Yes, I paid a dollar.

Q. When did your work terminate in 1941? When did it end?

A. When they send me on a vacation?

Q. Yes. A. That was in July.

Q. You went on your vacation in July?

A. Yes.

Trial Examiner Mouritsen: I think maybe we can shorten this.

Do you disagree with the date set out in the answer, namely, July 31, 1941?

Mr. Ryan: Is that the end of the vacation or the beginning of it?

Mr. Smith: I couldn't tell you. Just a minute.

(Testimony of Herman Fruhn.)

He was on vacation from the middle of July to the last of July, ac- [454] cording to my records.

The Witness: I know it was in July.

Q. (By Mr. Ryan): When you went on your vacation did you have a conversation with anybody as to what you were going to do at the end of your vacation, when your vacation was over?

A. No, because every year I know when we get back from the vacation——

Mr. Whitelaw: We are going to object to any voluntary statement. The answer is No.

Trial Examiner Mouritsen: I will sustain the objection.

Q. (By Mr. Ryan): On previous years would you take vacations in the summer or some time in the year while working for the company?

A. I don't understand.

Q. In the years before that, while you were working for the company, did you take a vacation every year? A. Yes, sir.

Q. How was that worked, can you tell us how you went about that?

A. They give us two weeks vacation; one week paid. And come back from your vacation sometimes they put you to work and sometimes they lay us off another two or three months.

Q. And then how would you——

A. Then they let us know, we go to the ice plant and find [455] out when we go to work.

Q. How would they let you know?

A. Mr. Pool come after us.

(Testimony of Herman Fruhn.)

Q. Pete Pool? A. Yes; or send somebody.

Q. Now, in 1941, you went on your vacation in the middle of July, is that right? A. Yes.

Q. And it ended in the latter part of July?

A. Yes.

Q. What did they do at the end of your vacation? Did you go down to the plant?

A. Yes.

Q. Did you see anybody down there?

A. Yes.

Q. Whom did you see?

A. I saw Mr. Pool.

Q. Pete Pool? A. Yes.

Q. Did you have a conversation with him?

A. I asked him, he said, "Not yet."

Q. What did you ask him?

Mr. Smith: Let's fix a date.

The Witness: "When we going to start?"

Q. (By Mr. Ryan): When was that about that you went down [456] and saw Pete Pool?

A. That was after the vacation, right away.

Q. Right away after the vacation ended?

A. Yes.

Q. All right. Where did you talk to Mr. Pete Pool on that occasion?

A. I talked to him in the plant.

Q. Was anybody else with you there or with Mr. Pete Pool at the time?

A. I cannot remember was there any boys around, when I asked him or not.

(Testimony of Herman Fruhn.)

Q. What did you say to Mr. Pool and what did Mr. Pete Pool say to you, if anything?

A. He come out—"Come later, next week, try next week," he said.

Q. He told you to come back and try next week?

A. Yes, having us come back a few times.

Q. Did you go back the next week?

A. Yes.

Q. Did you see Mr. Pool again?

A. I saw Mr. Willard on the plant.

Q. You saw Mr. Willard, Mr. F. A. Willard (indicating)?

A. Yes, Mr. Willard in the tank. I asked him, and the first time I asked him, he said, "Not yet."

Q. What did you ask him? [457]

A. When he put me to work.

Q. Was that all he said? A. Yes.

Q. And then did you go back again?

A. Then after they started up I met him again in the tank, the same place.

Q. After the plant started to operate?

A. Yes.

Q. How long afterward was it that you went to see Mr. Willard again?

A. Just started the day before.

Q. You saw Mr. Willard in the tank room on that occasion? A. Yes.

Q. Was anybody else present? A. No.

Q. What was said by you and Mr. Willard on that occasion, if anything?

(Testimony of Herman Fruhn.)

A. I asked him if he would put me to work. He said, "Not yet." That I would have to wait awhile.

Q. Is that all that was said on that occasion?

A. Yes, sir.

Q. Then did you go back again, Mr. Fruhn, to the plant? A. Yes, sir.

Q. How soon thereafter did you go back again?

A. About three weeks. [458]

Q. About three weeks later? A. Yes.

Q. Did you see any representative of the company on that occasion?

A. Yes, I was in the office and talked to Mr. Smith.

Q. Mr. Herman Smith?

A. Herman Smith, yes.

Q. And was anybody present when you talked to him?

A. Yes. I asked him about the job——

Q. Was anyone present besides Mr. Smith?

A. No.

Q. Tell us what you said and what he said, if anything.

A. Yes. I asked him about the job and he said he can't give me the ice puller's job back, but they would let me go in the store. I said, "I don't know if I make that in the storeroom, because I never worked in the storeroom before and stored ice." And so I tried it until 12:00, made it three hours, it was a too hard job for me, and I quit.

Q. Did you go to work in the storeroom right

(Testimony of Herman Fruhn.)

away after Mr. Smith offered you the job in the storeroom? A. Yes.

Q. You worked there in the morning?

A. I worked the forenoon until 12:00 in the night, I only worked three hours and couldn't make it. I got my boy—I have a 19 year old boy—and he helped me. [459]

Q. That night? A. Yes.

Q. Then what did you do, Mr. Fruhn, after that? You didn't continue in the storeroom?

A. It was not my job and I couldn't make it.

Q. Did you talk to anybody of the company then?

A. Yes, I told Mr. Smith, "It is too hard for me, it is not my job." And I never did the job.

Q. When did you talk to Mr. Smith about that, telling him it was too hard?

A. What do you mean?

Q. When did you talk to Mr. Smith on that occasion and tell him it was too hard in the store room for you?

A. When I came after my check, whatever is coming out of my check.

Q. When did you go after your check?

A. A few days after that.

Q. Did Mr. Smith say anything to you on that occasion? A. No, he said nothing.

Q. Did you see anyone there after that, either Mr. Pete Pool, Mr. Willard or Mr. Smith?

A. I saw Mr. Pool.

Q. When did you see him after that?

(Testimony of Herman Fruhn.)

A. The same day I saw him.

Q. The same day you came after your check?

[460]

A. Yes.

Q. Did you have a conversation with Mr. Pool?

A. They said, "You couldn't take it."

Q. Did he say anything else? A. No.

Q. Did you ask him anything?

A. Yes, I told him that was not my job and I would like to have my job back.

Q. Did he say anything to that?

A. No, he said nothing. [461]

Cross Examination

Q. (By Mr. Smith): Mr. Fruhn, you testified that you talked to Mr. Willard in the tank room. You only talked to him one time, did you not, about coming back to work? A. Two times.

Q. And can you give me the date of the first time?

A. I don't know the date, the same day we start, it was a week ahead—before they start at the plant.

Q. Was it before they started pulling ice, or afterward?

A. Before they started pulling ice, it was the week before.

Q. You are sure you talked to Mr. Willard then? A. Yes.

Q. And when do you say was the second time?

A. A day after they started the plant.

Q. A day after they started the plant?

A. Yes.

(Testimony of Herman Fruhn.)

Q. And he told you, "Not yet."

A. The first time he said, "Not yet." And the second time he said, "Not yet, you have to wait."

Q. Then how many days was it from then until Herman Smith put you on?

A. About three weeks.

Q. You had been laid off every summer, had you not, Mr. Fruhn, when the plant shuts down?

A. Yes,—not every summer. In the first three or four [463] years when I started working there, they never laid us off, put to work in the shop.

Q. For the last 10 years you have been laid off every summer?

A. In last six years they laid us off.

Q. You were off two or three months every fall?

A. One month to three months.

Q. And you worked for Reed Manchester, did you not, after you were laid off in July, 1941?

A. Yes.

Q. How long did you work for Reed Manchester?

A. I cannot remember how long I worked.

Trial Examiner Mouritsen: When you worked for Manchester, was that out at the plant? Did he do some work out at the plant, or was that some place else?

The Witness: That was in the store room.

Trial Examiner Mouritsen: Out at the plant, the Holtville Ice Company?

The Witness: Yes.

Q. (By Mr. Smith): You were paid by Manchester while you worked for him?

(Testimony of Herman Fruhn.)

A. Yes. [464]

Q. Herman Smith told you you could have the job in the store room if you wanted it?

A. Yes.

Q. You said the work was too hard for you and you didn't want it, and you quit?

A. I worked in the storeroom.

Q. You worked one day?

A. One night. [465]

Q. When they started up that fall, isn't it true that Mr. Stout was pulling ice? A. Yes.

Q. And he had previously been an engine operator, had he not, a Diesel operator?

A. Yes. [467]

Recross Examination

By Mr. Petersen:

Q. Mr. Fruhn, had you worked at the plant as long as Mr. Stout, or longer? A. Longer.

Q. You worked there longer than Mr. Stout?

A. Yes.

Q. You worked as a ice puller all the time?

A. Yes.

Q. Had you worked there longer than Mr. Harlan? A. Yes.

Q. Had you worked there longer than Mr. Hogue? [469] A. Yes.

Q. And you had worked there longer than Mr. Gettle? A. Yes.

Q. You had never done any other type of work there except— A. Ice pulling.

Q. —ice pulling? A. Yes. [470]

No. 10695

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

HOLTVILLE ICE AND COLD STORAGE COM-
PANY, ASSOCIATED FARMERS OF IM-
PERIAL COUNTY and HUGH T. OS-
BORNE,

Respondents.

Transcript of Record
In Two Volumes
VOLUME II
Pages 391 to 876

Upon Petition for Enforcement of an Order of the National
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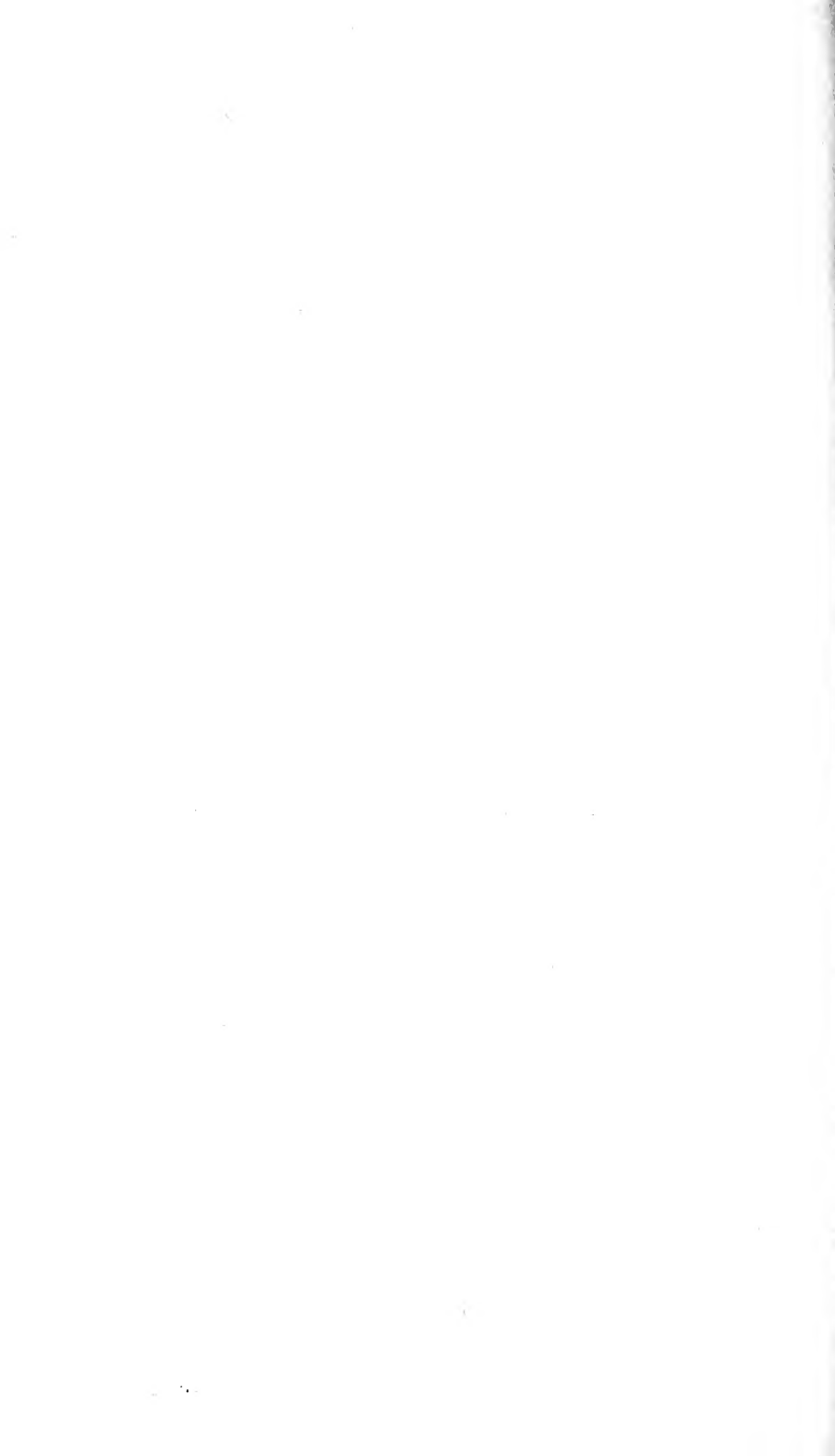
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Upon Petition for Enforcement of an Order of the National
Labor Relations Board



ARTHUR LEE STANDIFER,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Will you state your full name, please.

A. Arthur Lee Standifer.

Q. Sometimes just Arthur Standifer?

A. Yes.

Q. What is your address, where do you live?

A. 448 Vine.

Q. Vine Street? A. In El Centro, yes.

Q. Were you ever employed by Holtville Ice & Cold Storage Company? A. Yes.

Q. When were you first employed by that company? A. It was around January 1st of '36.

Q. '36? A. Yes.

Q. And how long did your employment continue with that [471] company?

A. I think it was the first of October in '41.

Q. What was the job that you first performed for the company when you were first hired?

A. Storeroom.

Q. How long did you continue in the storeroom, approximately, if you can't remember exactly?

A. Somewhere around two years.

Q. Then what did you do?

A. Run the crane, pulling ice.

Q. Is that that machine that runs back and forth over the cans of ice? A. Yes, can puller.

Q. How long did you operate that?

(Testimony of Arthur Lee Standifer.)

A. Approximately two years, somewhere around there.

Q. Then what did you do?

A. Went on as relief engineer.

Q. How long were you a relief engineer?

A. Up until I was laid off, somewhere around a year, I think.

Q. What were your duties as a relief engineer?

A. To see after the engines and compressors.

Q. Is that what you were doing when your employment terminated? A. Yes.

Q. Did you have occasion to make application for membership in a labor organization while you were employed by the company? [472]

A. You mean with the A. F. of L.?

Q. Yes; that is a labor organization.

A. Yes.

Q. And when was that?

Mr. Whitelaw: I would like to object if I may, Mr. Examiner, to his form of the question, when he was employed by the company. There is no showing whether he was employed or not, he hasn't testified he was employed.

Trial Examiner Mouritsen: I don't think there is any question about it. In other words, the Respondent says he worked up until October 3, 1941.

Mr. Whitelaw: I withdraw my objection.

The Witness: Around September 26th, somewhere around there.

Q. (By Mr. Ryan): 1941? A. 1941.

(Testimony of Arthur Lee Standifer.)

Q. Where were you when you made application for membership in the Union?

A. The Union Hall up here.

Q. In El Centro? A. Yes.

Q. The A. F. of L. Labor Temple?

A. Yes, sir.

Q. Did you sign any documents when you made application for membership in the Union? [473]

A. Well, we just made out the forms there.

Q. Did you fill out a form?

A. Filled out the application.

Q. What organization was it that you filled out a blank for, what union was it?

A. Oh, it was the A. F. of L. Teamsters.

Q. Then did you make any payment of any money on that to the Union?

Trial Examiner Mouritsen: That has already been answered.

Mr. Ryan: All right.

Q. (By Mr. Ryan): After you had made application for membership in the Union, did you continue to work for the company?

A. Yes, a few days.

Q. How long thereafter?

A. Maybe a week, I wouldn't say for sure.

Q. And what occurred then?

A. Just laid me off.

Q. Who laid you off? A. Pete Pool.

Q. Peet Pool? A. Yes.

Q. Did he say anything to you?

(Testimony of Arthur Lee Standifer.)

A. No, just said he was sorry, he would have to lay me off.

Q. What were you doing at that particular time?

A. I think I was painting at the time. [474]

Q. What were you painting?

A. Just painting inside the engine room.

Q. And did he say anything else?

A. I asked him for how long, and he said he didn't know.

Q. Was that all the conversation?

A. I think it was.

Q. After that, did you have any occasion to meet Pete Pool? A. Oh, I met him in town.

Q. About how long after that lay-off did you meet Pete Pool in town?

A. It was a week or so.

Q. Where did you meet him?

A. One of the pool halls.

Q. What town? A. Holtville.

Q. Did you have a conversation with him on that occasion? A. Yes, I was talking with him.

Trial Examiner Mouritsen: Did you talk with him either about the union or going back to work?

The Witness: Oh, I asked him if he knew when we were going to start up, and he said he didn't.

Q. (By Mr. Ryan): Was that all that was said in that regard?

A. Yes, that is all I asked him about.

Q. Did you see him again thereafter on any occasion to talk to? [475]

(Testimony of Arthur Lee Standifer.)

A. I seen him several times in town, run across him.

Q. About how long was it after this meeting in the pool hall you next saw him?

A. I don't know, a week or so.

Q. Where did you see him on that occasion?

A. On the street, I think it was.

Q. Was this in Holtville or here?

A. Holtville.

Q. Did you say anything to him then about going to work or joining the union?

A. No, I didn't say anything then.

Q. Did you talk to him at any time after that?

A. Oh, we both lived there and I was in town every day, and I was always running across him and saying something.

Q. Did you talk to him any more after that about going back to work? A. No, I didn't.

Q. Did Mr. Pool ever come to you after that and tell you to come back to work, or offer you back your job? A. No.

Q. Did you see any other representative of the company during that period?

A. Oh, I talked to Herman a time or two when I would be down at the plant.

Q. When did you talk to Herman? That is Herman Smith, is it? [476] A. Yes.

Q. When did you talk to him? Can't you give us an idea about this? We don't expect you to remember an exact date but approximately the time the things occurred.

(Testimony of Arthur Lee Standifer.)

A. Around the 15th of October, I guess, somewhere around there.

Q. Where was it you talked to Mr. Smith on that occasion, Herman Smith?

A. There at the plant.

Q. Was anyone present while you were talking with him? A. No, I don't think so.

Q. Will you tell us what he said to you and what you said to him on that occasion, if anything, in substance, if you can't remember the exact words?

A. I didn't ask him about going back to work because Pete was the one we see for that.

Q. Did you, at any time, ever ask Mr. Smith about going back to work?

A. No, I asked him if they would make me out a recommendation if I didn't go back to work, for some other outfit. He said they would, they didn't hold anything "agin" the boys.

Trial Examiner Mouritsen: Did you ever apply to Mr. Willard or anyone else?

The Witness: No.

Mr. Ryan: I have no further questions. [477]

Cross Examination

Q. (By Mr. Smith): Mr. Standifer, you said you were doing some painting. After they quit manufacturing ice in June of 1941, was the painting work the last work you did up until October 1st?

A. The last work?

Q. Yes. Was that the last work——

(Testimony of Arthur Lee Standifer.)

A. That was what I was doing at the time I got laid off.

Q. What were you painting?

A. The inside of the engine room.

Q. Did you finish it? A. No.

Q. Who else was working on it?

Trial Examiner Mouritsen: Did you hear the question? Who else was doing the painting?

The Witness: There was no one but me.

Q. (By Mr. Smith): You were painting the tank, the new tank?

A. No, I was painting on the walls.

Q. You say you did not finish it? A. No.

Q. How much was unfinished?

A. I don't know, maybe start in painting—I couldn't say how much was unfinished.

Q. Didn't you paint the new tank? [478]

A. Well, I went back and worked a few days for the York Company out of Long Beach; I was painting on the new tank then.

Q. You finished it then, didn't you?

A. No.

Q. Well now, in previous years you were generally laid off for some time after they quit manufacturing ice in the summer time until they started up in the fall?

A. Sometimes we were and sometimes we weren't, some years we would only get our two weeks vacation and that would be all the time we were off.

(Testimony of Arthur Lee Standifer.)

Q. Some years you had as much as two or three months off, didn't you?

A. As long as I was down there, low storeroom man, I was.

Q. I believe you said you were a part time operator or at least operator of one of the Diesel engines before you quit? A. What?

Q. Did you work as one of the operators before you quit? A. Yes.

Mr. Ryan: I object to the use of the word "quit."

Q. (By Mr. Smith): Before your employment ceased there, how long did you work as an operator?

A. I would say somewheres around a year.

Q. You knew, didn't you, Mr. Standifer, that when they changed from Diesel power to electric power there would not [479] be room for all the men when they started up in the fall?

Mr. Petersen: To which we object, it calls for a conclusion of the witness.

Mr. Smith: I think it is part of the facts.

Trial Examiner Mouritsen: I would be interested if anybody told him that.

Q. (By Mr. Smith): Did you men discuss that point among yourselves?

A. Yes, we figured we would be put back from engineer to pulling ice and they would go back in the storeroom.

Q. You knew someone would have to be laid off?

A. Yes.

Mr. Ryan: I object to that.

(Testimony of Arthur Lee Standifer.)

Mr. Petersen: I object, too.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): What made you figure that the operators would go to pulling cans, and the can pullers would be in the storeroom? Did you fellows just figure that out yourselves or did anyone tell you that? A. I wasn't told.

Q. You mean you just figured that was probably what would happen?

A. By being the oldest men, yes.

Q. You never did really apply to be reinstated after the plant started in the fall of '41, did you? [480]

A. It hadn't been a custom in the last years to go and ask for a job back, they usually notified us when they were going to start up.

Q. You never did actually go and ask for work, did you?

A. Nothing more than just ask Pete if he knew when they were going to start up. [481]

Q. (By Trial Examiner Mouritsen): Mr. Standifer, after you signed this application for membership in the Teamsters, did Mr. Pool or Mr. Smith or Mr. Willard ever say anything to you about your having done that? A. No. [486]

LESTER CLARENCE HART

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Will you state your full name, Mr. Hart?

A. Lester Clarence Hart.

Q. Is that sometimes spelled Lester C. Hart?

A. Yes, that is the way I usually sign it.

Q. Where do you live, Mr. Hart?

A. I live at 881 Orange, El Centro.

Q. Mr. Hart, were you ever employed by Holtville Ice & Cold Storage Company? A. Yes.

Q. When were you first employed by that company? A. Oh, in 1926.

Q. How long did your employment continue?

A. Well, it continued until about—around the 1st of October, 1941.

Q. And what was your job when you first went to work for [487] the company?

A. When I first went to work I was working on ice cans and then—sometime later I started pulling ice.

Q. About how long were you on the ice cans as you explained it?

A. About two weeks, I guess.

Q. What were your duties in that regard?

A. Just straightening out the sides of the cans, pounding out the sides.

Q. Then you became an ice puller. How long did you stay on that job?

(Testimony of Lester Clarence Hart.)

A. As near as I can recollect about two and a half or three years.

Q. What did you do after that, Mr. Hart?

A. Then I became an operating engineer.

Q. How long did you continue as an operating engineer?

A. Oh, about two or three more years, I guess, two or two and a half.

Q. Then what did you do?

A. Then I was given the job as plant mechanic.

Q. How long did that continue?

A. That continued until the time I was laid off.

Q. In 1941, October, 1941? A. Yes.

Q. What were your duties as plant mechanic?

[488]

A. Well, all kinds of general maintenance work, making ice chutes and welding any broken machinery, pouring bearings and making shafts and overhauling pumps and motors, Diesel engines, making bearings for Diesel engines, and I did some work on sheds.

Q. What sheds?

A. Packing sheds where they shipped the vegetables.

Q. Did you do that for the Holtville Ice & Cold Storage Company? A. Yes.

Q. What work did you do in the sheds?

A. Repaired the chains—conveyor chains and put teeth in the ice crushers, and take them out and repair certain broken parts of them.

Q. Who paid you for that type of work when you were over in the sheds working?

(Testimony of Lester Clarence Hart.)

A. I drew all my salary from the ice plant.

Q. Mr. Hart, while you were employed by the Holtville Ice & Cold Storage Company did you have occasion to join a union?

Mr. Whitelaw: To which we object as calling for an opinion and conclusion of the witness.

Q. (By Mr. Ryan): Labor organization?

Mr. Smith: Object to the words whether he joined one or not.

Trial Examiner Mouritsen: Sustained. [489]

Q. (By Mr. Ryan): Did you have occasion to make application for membership in a labor organization? A. Yes.

Q. What labor organization was it?

A. It was the Teamsters organization.

Q. A. F. of L.? A. A. F. of L.

Q. And when was that?

A. Well, that was around the latter part of September.

Q. And where were you when you made application? A. Over here.

Q. For membership in the Teamsters?

A. At the local hall.

Q. In El Centro? A. In El Centro.

Q. Were you here with other employees or by yourself? A. Yes, with others.

Q. How many other employees were with you, if you can recall?

A. As near as I can recall there were 11 of us altogether.

(Testimony of Lester Clarence Hart.)

Q. Can you tell us briefly what happened up in the hall, what you employees did up there?

A. Well, we were—had been talking some about it before and we just wanted to go over there, mainly for the purpose of finding out what kind of an organization it was.

Q. The Teamsters was? [490]

A. Yes, and see what they would offer us, and the initiation fees, and so forth, and we had decided that we would like to ask for a raise and we thought we would go about it in a legitimate manner, according to the Wagner Act and appoint a bargaining agent. We thought after we went there and found out what they were we would appoint them our bargaining agent and somebody made the motion and somebody seconded it and we voted unanimously by a rising vote.

Q. Who voted?

A. The employees of Holtville Ice Company.

Q. The employees who were present?

A. Yes. I can name part of them, I don't know whether I can recall all of them or not. There was myself and Herman Pool and Bailey Pool, Henry Miller, Henry Fredenberg, Tom Herring, Pete Drinkard, Perry Blankenship, Herman Fruhn and Arthur Standifer. I don't remember just now whether there was any more or not.

Q. Do you know M. K. Stout?

A. Yes, M. K. Stout was there.

Q. He was there? A. Yes.

(Testimony of Lester Clarence Hart.)

Q. How was this vote taken that you just testified about?

A. It was a standing vote, all in favor of appointing the A. F. of L. as our bargaining agent was supposed to rise, and everybody rose. [491]

Q. You saw that, did you?

A. Yes. I was sitting near the back and I saw the whole bunch.

Q. Then on that same occasion did you have occasion to sign an application blank?

A. Yes, sir.

Q. For the Teamsters?

A. Yes, we—application blanks were passed around and everybody signed them.

Mr. Whitelaw: We object to that last answer as being not responsive. He was asked if he signed an application blank. I ask to have the last portion of the answer stricken out as a conclusion and opinion of this witness, unless he saw each man sign it.

Trial Examiner Mouritsen: I will deny the motion to strike.

I wish you would inquire further into that.

Q. (By Mr. Ryan): Did you see the other individuals sign them?

A. I saw them writing on them and they were turned in and accepted; they must have signed.

Mr. Whitelaw: We ask to have that stricken.

Trial Examiner Mouritsen: I will deny it.

Is that your basis for saying that they all signed them, just what you told us here? [492]

(Testimony of Lester Clarence Hart.)

The Witness: That is one of them, and another one is that I noticed most all of them handed in some money, either full payment or down payment on the initiation.

Q. (By Mr. Ryan): Mr. Hart, after this occasion at the Union Hall, when you were present there, as you have just testified, after that were you working for the company at that time?

A. Yes.

Q. You were? A. Yes.

Q. How long after that did you continue to work for the company, about?

A. Well, I worked two or three days, as near as I can recall, and then I was told to go on my vacation.

Q. Who told you that, Mr. Hart?

A. Mr. Pete Pool.

Q. What did he say in that regard?

A. He just said Mr. Willard said for us boys to go on our vacations; and Herman Pool was standing there close together at the time.

Q. Was anyone else present, any other boys?

A. No, I don't think there was any near enough to overhear that.

Q. Did you understand how long your vacation was to be?

A. It had been understood in other years we would take two [493] weeks, report back for work in two weeks.

Q. Did you proceed to take your vacation of two weeks at that time? A. Yes, sir.

(Testimony of Lester Clarence Hart.)

Q. After two weeks what did you do?

A. I returned and went in and took my time card that was in the rack, my name, and everything on it, and punched in on the clock, and went back and saw Pete and asked him what I was supposed to do. And he said that Mr. Willard told him to lay everybody off. And I says, "How long?" And he said, "Until further notice."

Q. You then went back home again, I presume?

A. Yes.

Q. Then did you thereafter receive any notice from the company to come back to work?

A. No, I never did.

Q. Did you thereafter talk to any representative of the company about going back to work?

A. Well, I saw Pete from time to time.

Q. Pete Pool?

A. Yes, Pete Pool, and asked him when he wanted me to return to work, and he said, "Not yet."

Q. When would that be, over what period of time would that be that you contacted Pete or would see him?

A. Oh, I would see him every day nearly, once in awhile, once [494] a week or so I happened—it would happen the time came right, I would ask him.

Q. Had the plant started up when you would ask Pete?

A. No, they were still doing repair work.

Q. Would his answer be the same on each occasion?

(Testimony of Lester Clarence Hart.)

A. Yes, he said he didn't know, said, "I haven't got any orders yet."

Q. Did you see anyone else, other than Pete Pool?

A. No,—you mean—about work, you mean?

Q. Yes. A. No.

Q. Were you still in that vicinity when the plant did actually start up, in the vicinity of the plant, I mean, were you living close by?

A. I am not sure whether I was or not, I went to Los Angeles one trip and I don't know whether the plant started while I was gone or *now*.

Q. After the plant had started, at any time did you go to see? A. No.

Q. Did you talk to Pete at any time after the plant started?

A. Well, yes, I have talked to him several times.

Q. I mean, around the time it was getting started?

A. Yes, I talked to him then, I asked him who was going to be the mechanic down there. He said he guessed he was. [495]

Q. Now, a day or two after you had made application in the labor temple to join the Teamsters Union, Mr. Hart, did you meet Pete Pool downtown? A. Yes.

Q. A day or two afterwards? A. Yes.

Q. Where was that?

A. That was in Slick's place.

Q. Where is that, in what town is that?

A. In Holtville.

(Testimony of Lester Clarence Hart.)

Q. Is that a business place?

A. Yes, that is a restaurant.

Q. Did you have a conversation with Mr. Pete Pool on that occasion?

A. Yes, I came in and Pete says, "What did you fellows try to do, blackball me?" I said, "No. Why?" He said, "Why didn't you tell me you were going over to join the Union?" He said, "I would like to have went with you." I said, "I didn't think you needed to join because you are a superintendent." I think the conversation drifted on into something else then. I explained to him why we went over and joined, and so forth.

Q. Was anything said about Mr. Willard in that conversation?

A. Well, I don't remember whether there was then or not.

Q. Was anything said at any time during that period there, [496] when you were talking to Mr. Pete Pool about Mr. Willard, regarding the Union?

A. Well, he told me one——

Mr. Whitelaw: We would like the time and place. The question is very leading and suggestive.

Trial Examiner Mouritsen: Yes.

Mr. Whitelaw: We would like the time and place.

Trial Examiner Mouritsen: Fix the time and place.

Q. (By Mr. Ryan): It calls for a yes or no. Did you? A. Yes.

(Testimony of Lester Clarence Hart.)

Q. Now then, where was this that such a conversation occurred?

A. It was there in the plant.

Q. It was?

A. The next day after we joined.

Q. After you joined the union? A. Yes.

Q. And will you tell us whether or not anyone was present, other than you and Mr. Pool while you were talking? A. I don't think so.

Q. All right. Will you tell us what that conversation was about, what Mr. Pete Pool said and what you said, if anything?

A. I just met Pete there in the engine room, met face to face, and I didn't know just how the Company would take it——

Mr. Whitelaw: We object to——

Q. (By Mr. Ryan): Just tell what was said.

[497]

Mr. Whitelaw: The statement is a voluntary statement. I ask to have it stricken.

Trial Examiner Mouritsen: Yes.

Q. (By Mr. Ryan): Say what you said and what he said, if anything.

A. He said, "Mr. Willard is sure mad about you fellows joining the Union."

Q. Did you say anything?

A. Well, then I just told him why we did.

Q. What did you say about that?

A. I just told him that we wanted to ask for a raise, we wanted to have them represent us.

(Testimony of Lester Clarence Hart.)

Q. Had there been any custom in the past years with respect to your taking a vacation and then coming back to work at the end of the vacation period? Will you explain that, if there was such a custom?

A. I usually took my vacation the last, after the rest of them all went first, because I was busy doing some of the repair work, getting ready to start up in the fall and it was always customary whenever it got time, the superintendent would tell me when to go and I would go and return at the end of the the two weeks period to work.

Q. And would you return upon request, or just how would you happen to return at the end of that two weeks?

A. No, just understood to be back in two weeks —after the [498] two weeks was over, come back to work.

Q. When you went down to the plant at the end of your vacation would you go in and immediately start to work, or first talk to somebody?

A. Go there at the usual time in the morning and go to work.

Q. When you say you would go to work, you would just start to work, how would you know what work to do?

A. I would report to the superintendent first and see what he had lined up for me to do.

Q. He would tell you what needed to be done, would he? A. Yes.

Mr. Ryan: No further questions.

(Testimony of Lester Clarence Hart.)

Cross Examination

Q. (By Mr. Smith): Mr. Hart, the last ten years or so you were at the plant your work was exclusively that of a repair mechanic, was it not?

A. No, not altogether.

Q. Well, was the majority of your work as a repair mechanic?

A. No, I would say about 50-50.

Q. What other work was there you did?

A. Well, I built a lot of ice chutes for one thing, and made crusher teeth, for ice machine crushers over in the sheds. [499]

Q. That was mechanical work, wasn't it?

A. Yes.

Q. Your main work was keeping the Diesel equipment in operating order, wasn't it?

A. Well, that didn't require very much of the time.

Q. But you were the one and the only one that did that, were you not?

A. No, not the only one.

Q. You were the head man?

A. Well, the superintendent was in charge of that kind of work, and he put the other men on to taking apart and cleaning them up and putting them back together, and if there was any adjusting to be done, he would do that, or any bearings to be rebored or bushings to be put in, things like that, I did that kind of work.

Q. And to your knowledge there was never anyone employed to take your place, was there, after

(Testimony of Lester Clarence Hart.)

the plant changed over from Diesel power to electric power?

A. There was one man told me he worked down there for two or three days, made some bolts for the carpenter that was working in the store room.

Q. To your knowledge there never has been a steady employee to take your place, has there, since the change-over?

A. No, not to my knowledge.

Q. Didn't Herman Smith tell you, Mr. Hart, some time around [500] October, that there wouldn't be work for you since they had the electric power instead of Diesels?

A. No, sir, he did not.

Q. Didn't he give you the name of a hotel in Yuma where he thought you could get work?

A. Yes, he did that, that was after the plant had started production and I was laid off.

Q. He also gave you the name of another place he thought you could get work, did he not?

A. Not to my knowledge, no.

Q. He did give you the name of a hotel in Yuma who was looking for a mechanical engineer?

A. He told me there was a phone call for me there, they were looking for me.

Trial Examiner Mouritsen: Which one was this, Herman Pool or Pete Pool?

Mr. Smith: Herman Smith.

Q. (By Mr. Smith): Herman Smith, was it?

A. Yes, it was.

(Testimony of Lester Clarence Hart.)

Mr. Petersen: May we have the time and occasion fixed on that?

The Witness: I was down to the plant, he handed me a little slip, he wrote down the phone call, the address of the hotel in Yuma and said they wanted me to call them.

Q. (By Mr. Smith): Do you know when that was? [501]

A. Well, that was along the latter part of November, I believe.

Q. You went over to see that hotel, did you?

A. No, no, I called them on the phone.

Q. Well, wasn't there talk among you men, Mr. Hart, during the summer of 1941 when the plant was installing the electric power, that there would not be work for some of you fellows that had been working there under the Diesel power?

A. Not—it didn't include me. There was understood among the plant there that the operating engineers would be ice pullers, as well as engineers, because the electric motors wouldn't require all their time, like the Diesel engines would; as far as my work was concerned, I didn't hear anything about that.

Q. You didn't ask anyone and no one told you, is that it? A. Yes.

Q. You don't know, of your own knowledge that anyone at the Holtville Ice plant has been employed to do the work you formerly did, except this one occasion you speak of?

Mr. Petersen: To which we are going to object,

(Testimony of Lester Clarence Hart.)

he was not down at the Holtville Ice Company and can't speak on it.

Trial Examiner Mouritsen: I think it is repetitious.

Mr. Smith: I think he answered that.

Q. (By Mr. Smith): The only time you mentioned union to Pete Pool was when he told you—when he said to you, “Why [502] didn't you take me, I would like to join too?” Is that correct, Mr. Hart?

A. Yes, that was the first that had been mentioned.

Q. He didn't criticize you in any way for having signed up? A. No.

Q. Did he tell you he thought it was a good thing?

A. No, he didn't say whether he thought it was a good thing or not.

Q. You never heard him say anything against it? A. No.

Q. When was it that Pete Pool said to you that “Mr. Willard is mad about you fellows joining with the union”?

A. That was the next morning after we came back to the plant, after being over here to the hall.

Q. That would be the 27th of September then, is that right?

A. Yes, as near as I can remember.

Q. Now, Mr. Hart, Mr. Willard wasn't even in Holtville at the time, was he?

(Testimony of Lester Clarence Hart.)

A. He was either there that day or the day before.

Q. Wasn't Mr. Willard away on a vacation himself after they installed the electrical equipment?

Mr. Petersen: To which we are going to object for the reason it calls for a conclusion.

Trial Examiner Mouritsen: I don't think the question is objectionable upon that ground, I don't think the time has [503] been set when this was installed.

Mr. Smith: I will withdraw it.

Q. (By Mr. Smith): Mr. Hart, do you know when Mr. Willard did leave for his vacation and when he returned?

A. No, because when I was laid off and left the installation wasn't completed, the plant wasn't near ready to run.

Q. Do you know whether or not Mr. Willard was there then?

Trial Examiner Mouritsen: When?

Q. (By Mr. Smith): When you were laid off?

Trial Examiner Mouritsen: When he started on his vacation. He was laid off for two weeks.

Q. (By Mr. Smith): When was the last you worked, Mr. Hart?

A. About the last of September. Then I started on my vacation right around the first.

Q. Well, you never worked after the last of September, is that right? A. No.

Q. Did you go to work somewhere else then shortly?

(Testimony of Lester Clarence Hart.)

A. No, not until about the middle of December.

Q. Didn't do anything?

A. I just went to Los Angeles and put my application in several defense plants, looked for work.

Q. Then where did you go to work?

A. I went to work at the Shippers Ice Company.

Q. Where? [504] A. Here in El Centro.

Q. Have you been with them ever since?

A. Yes, sir.

Q. What kind of work do you do there?

A. I am chief engineer and plant mechanic; same kind of work I did over at Holtville.

Q. Isn't it true, Mr. Hart, that practically all the work you had been doing was no longer there after the change-over from Diesel power?

Trial Examiner Mouritsen: How can this man tell us about that?

Mr. Smith: Well, he knows.

Mr. Whitelaw: He is an engineer, he should know.

Trial Examiner Mouritsen: For what it is worth then. How many times did you go back after you were laid off, back to the plant to see how it was operating and what they were doing?

The Witness: I was there two or three times, just dropped in, go by.

Trial Examiner Mouritsen: How long would you stay there on those occasions?

The Witness: Not over 10 or 15 minutes.

Trial Examiner Mouritsen: Would you go

(Testimony of Lester Clarence Hart.)

through the plant and observe the operations when you were there?

The Witness: Yes. [505]

Trial Examiner Mouritsen: Now ask him your question.

Q. (By Mr. Smith): Isn't it a fact then that the greater part of your work had been done away with because of the change-over to electric power?

A. Not at the time I was laid off, it wasn't, because the job there, I was working on that, hadn't even completed.

Q. What job was that?

A. I was building a dump, in the dip tub, to enlarge, double the capacity of the crane to pull ice, and I had to make a larger dump and had to rebuild the whole ice dump.

Trial Examiner Mouritsen: Do you mean that work hadn't been completed at the time you started on your vacation in early October, or that it hadn't been completed when you came back after your vacation and spoke to Mr. Pool?

The Witness: It hadn't been completed when I got back from my vacation.

Q. (By Mr. Smith): There was just a little welding job to be completed, wasn't there?

A. I don't know, quite a bit of machine work and welding, and I had ordered the parts through Herman Smith.

Q. Do you know whether or not Pete finished it up, himself?

A. Well, it was—it was took down to Sam

(Testimony of Lester Clarence Hart.)

Webb's blacksmith shop and he made it and Pete installed it. [506]

Cross Examination

By Mr. Petersen:

Q. What percentage of your repair work was done approximately—was done in the sheds of the vegetable packers to which you have testified, putting in the chains and sprockets?

A. I imagine about 25 per cent, somewheres about.

Q. What percentage of your work was approximately put in on the ice chutes and ice cans?

A. Oh, I don't know, I imagine it would be about 50, 60 per cent of the work was on general repair work that way.

Q. What part of your work was actually done on repairing Diesel engines?

A. Oh, I would say more than ten or twelve per cent at times.

Mr. Petersen: That is all. [508]

Q. (By Trial Examiner Mouritsen): That would make about 85 per cent, around there. What were you doing the rest of the time?

A. Well, one thing I didn't quite—took a lot of my time building some heat exchangers to cool the water, that took quite a lot of time.

Q. Well, would that—

A. That would be Diesel engine work, too, I think.

Q. Would that last type of work you mentioned, would that cease when the Diesel engines were re-

(Testimony of Lester Clarence Hart.)

moved or would that continue under an electric power source?

A. That would cease then, took out, I understand, and sold the heat exchangers.

Q. You don't use heat exchangers under the electric power? A. No.

Trial Examiner Mouritsen: Anything further?

Mr. Smith: I guess that is all.

Cross Examination

Q. (By Mr. Smith): Do you know whether there has been any work done at all on the ice cans or chutes since you left the plant, Mr. Hart?

A. No, I don't, I haven't been around there enough to know.

Mr. Smith: That is all.

Mr. Petersen: One more question. [509]

Cross Examination

By Mr. Petersen:

Q. Has it been a general practice that a certain amount of work had to be done on the ice cans there, continuous operation?

A. Well, as a rule, yes. The cans would get to leaking and weren't fit to make ice in, they would have to be repaired or changed for better cans.

Q. Did you repair those cans generally if they were repairable?

A. Usually, yes, there were quite a number of them. [510]

LE ROY H. DAVIS,

called as a witness by and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Will you state your full name, please, Mr. Davis? A. Le Roy H. Davis.

Q. Where do you live?

A. In Bloomington, California.

Q. Did you ever live in Imperial County?

A. Yes, I did up to nine months ago.

Q. Were you ever employed by Holtville Ice and Cold Storage Company? A. I was.

Q. When were you first employed by that company, and how long did you remain in the employ of the company?

A. I was employed first in February, 1932, up to October, 1941.

Q. In what capacity were you first employed by the company?

A. As a laborer, platform man.

Q. As a laborer? [516]

A. Yes, platform man, I think is what they call it.

Q. How long did you continue on that particular job, approximately?

A. I was temporarily off and on from February, 1932, to about September, 1934.

Q. Then what did you do, Mr. Davis?

A. Well, I was taken into the office then as assistant bookkeeper.

(Testimony of Le Roy H. Davis.)

Q. How long did you continue in that capacity?

A. Well, I was assistant bookkeeper, among other things, from then until I left their employment.

Q. When did you leave their employ?

A. October, 1941.

Q. Did you have any other job while you were assistant bookkeeper?

A. Yes, I was delivery foreman part of the year, had charge of the delivery of vegetable ice.

Q. And how long did you hold that job?

A. I took those duties over in 1935, I believe, early in 1935, about January 1st, 1935.

Q. Now, during your employ for the company was it customary for you to work the entire year or be laid off certain parts of the year?

A. I worked the entire year from the time I was taken into the office in 1934 until I was laid off in 1941. [517]

Q. Did you have occasion to make application for membership in a labor organization at any time during your employ with the company?

A. Well, I—no one ever contacted me about it until I attended a labor meeting over here at the Temple of Labor.

Q. A. F. of L.?

A. I mean no one asked me to join until that time. I had been asked to go to meetings, I attended one meeting over there and then I joined.

Q. When did you make application for membership?

(Testimony of Le Roy H. Davis.)

A. It must have been about September 3rd, I believe—wait a minute, September 3, 1941.

Q. September 3rd, are you sure about that month?

A. Let me think a while about it. That is kind of old for me. Let me think a minute. No, it was October 3rd.

Q. 1941? A. 1941.

Q. What union was that you made application to become a member of?

A. A. F. of L., Teamsters Union.

Q. Who was present at the time you made your application in the Labor Temple?

A. Oh, there was a large attendance that night, there were several employees from the Holtville Ice Company and a number from the Imperial Ice and the Pure Ice and the Fruit [518] and Shippers Ice Company.

Q. Who was present from the Holtville Ice and Cold Storage Company?

A. The men I know, that I saw, were Lester Hart and Henry Fredenburg, Arthur Standifer, Herman Pool, Bailey Pool, Perry Blankenship. There are others, I couldn't name them. I remember seeing those there. Some of them came over in my car, some of them came in other cars.

Q. Did they make application at the same time you did?

A. Some of them had joined up before, some of them signed that night. I couldn't say from memory who it was joined that night.

(Testimony of Le Roy H. Davis.)

Mr. Whitelaw: May we object to the conclusion of this witness, that they joined up?

Trial Examiner Mouritsen: Yes.

Q. (By Mr. Ryan): Shortly prior to this occasion when you were at the Labor Temple and made your application for membership in the Teamsters Union, had you had a conversation with Mr. Herman Smith?

A. Right after the first meeting, when those—the first group joined I did.

Q. When was that, about?

A. The following morning, I believe.

Mr. Whitelaw: Just a minute, please. For the purpose of the record we ask to have the conclusion of the witness [519] stricken, as hearsay.

Mr. Smith: I will join in the objection.

Trial Examiner Mouritsen: I will take it to mean when they signed these applications, rather than when they joined.

Q. (By Mr. Ryan): It would be around the 27th of September that you had this conversation with Mr. Smith?

A. It would be a week previous.

Mr. Whitelaw: We are going to object to the leading and suggestive questions by Mr. Ryan.

Trial Examiner Mouritsen: I don't see any harm in fixing the time like that. September 26th is pretty generally accepted as the time they did it. He said it was the following morning.

Mr. Whitelaw: I didn't hear him say it was the following morning.

(Testimony of Le Roy H. Davis.)

Q. (By Mr. Ryan): Mr. Davis, where were you on that occasion when you had the conversation with Mr. Herman Smith? A. In the office.

Q. Of the Ice Company?

A. Of the Ice Company.

Q. Was anyone present when you talked to him?

A. Jack Garber was present.

Q. Who was he?

A. He was—another assistant bookkeeper.

Q. For the company? [520]

A. For the company.

Q. Will you tell us what you said and what Mr. Herman Smith said on that occasion?

A. It wasn't a very long conversation. He asked me what I knew about it, about the boys joining the union the night before, and I told him I didn't know anything about it, that they had told me there was a meeting taking place the night before and they had asked me to go, but I had a previous engagement, so I didn't go. I told him I heard some of them had joined, I didn't know how many or who they were at that time.

Q. Now, was that about all that conversation, Mr. Davis?

A. Well, that is about all. I think that is all that I remember at this time.

Q. Then after you had made application for membership in the Teamsters Union, did you have a conversation at any time thereafter with Mr. Hugh Osborne? A. Yes.

(Testimony of Le Roy H. Davis.)

Q. And when did you have such a conversation?

A. It was just a few days after I had signed up, Mr. Osborne came to my house one evening.

Q. Signed up?

A. Signed up with the union. Mr. Osborne came to my house about 5 o'clock one evening and my wife answered the door and asked him to come in, he said he was just coming for a [521] few minutes, he would prefer to talk on the porch. She called me and I went out there and talked a while about this subject, about joining the union.

Q. Tell what Osborne said to you and what you said to him on that occasion.

A. I couldn't give you a very good account of it at this late date. He asked what the trouble was down at the plant and I told him as near as I could what it was, what I heard the boys say.

Q. What did you say?

A. They were dissatisfied on account of the wages. They had heard early that spring that wages had been raised all over the Valley at the other ice plants.

Q. You say they had heard. Whom did you have reference to?

A. These boys who had joined the union. The boys that joined the union. He asked me about the trouble and I told him. The boys had, from time to time, asked Mr. Smith for raises in their wages to compare favorably with wages in the other plants; they didn't get any results so they heard

(Testimony of Le Roy H. Davis.)

about this meeting and they went over there. And another thing that complicated things——

Q. Went over where?

A. To the first meeting that took place at the Temple of Labor. Another thing that complicated matters——

Q. Is that what you told Osborne? [522]

A. That is what I told Osborne. Another thing that complicated matters at this same time was that the Holtville Ice Company was doing a lot of maintenance work and enlarging the plant, changing over from electric—from Diesel power to electric power, and to do this work they imported quite a lot of union labor from L. A.; from outside of the county, anyway. And these union men, of course, were getting the union scale of wages.

Mr. Whitelaw: Just a minute. Is this what you told Mr. Osborne, all of this?

The Witness: Yes.

Mr. Whitelaw: You told him all this?

The Witness: Yes.

Mr. Whitelaw: All right. Go ahead.

The Witness: These union men about getting the union scale of wages, pay, while the men working at the plant, some of them doing the same kind of work and getting the plant wages, which were approximately 50 per cent of the union scale. And, of course, these union men, while they were down there they had been talking up the union idea to these men and they naturally fell for it, considering the difference in the scale of pay. And they

(Testimony of Le Roy H. Davis.)

were willing to attend this meeting that night. But from what I gathered, what little I talked to them the night before this meeting took place no one had any intention of joining the night they [523] went over there. They listened to the talks on union, according to the way it was told to them, and they figured it would be a good idea to join, and they felt they had a right to join, so they did. A number of them did, not all of them.

Q. This is what you were still telling Mr. Osborne?

A. Yes, I told him that the plant men had always felt loyal to the plant, some of them had worked for the plant from the time the plant was built, and others that had come in later felt the same way about it. And they had for years and years considered it one of the best places to work in the Valley. I told Mr. Osborne this. These were some of the things I actually told him.

Q. What did he say to you then?

A. That was about all I told him. And he told me that—well, I did add, I did think there wasn't enough contact between the heads of the firm and the employees, too much of the contact work was done by men that had to go higher to get their authority for any action that was taken. He agreed with me there, he said he thought that that was the way it was, too.

Q. What did he say to you besides that, anything?

(Testimony of Le Roy H. Davis.)

A. Well, he went on from there and he suggested the idea of a company union.

Q. What did he say in that regard? [524]

A. He wanted to know why I didn't try to organize a company union. And I told him that I didn't think it would be any ahead there, we wouldn't have any power to better our station if we did form a company union. We would be just the same group of employees asking for the same thing, but with no power back of us to back it up. Then I told—then he told me that the Associated Farmers were against organized labor, because the organized labor meant closed shop, and closed shop was unAmerican, and the Associated Farmers were against closed shop because it was unAmerican. Then he told me that—in the first place, he said that Mr. Willard hadn't talked to him about this case, with him, personally, but then he told me that Mr. Willard would close the plant down before he would deal with the A. F. of L.

Q. Did he say anything more about this idea of forming—

A. No, I told him that I had signed with the union and that I would stay with the rest of the bunch until they agreed, the majority of them agreed to withdraw or abandon any idea of joining the union.

Q. Then thereafter, did you have a conversation with Herman Smith again after this meeting with Mr. Osborne that you had at your home?

A. The only subsequent conversation I had with

(Testimony of Le Roy H. Davis.)

Mr. Smith was when he called me down to the office to tell me my [525] services would no longer be required.

Q. A few days after your conversation with Mr. Osborne, at your home, didn't you have a conversation with Herman Smith?

A. Yes, when he called me to the office to tell me my services would no longer be required. I don't think I talked to him after that, until that time.

Trial Examiner Mouritsen: Let's lay this aside and you testify without its aid.

The Witness: What is it?

Trial Examiner Mouritsen: Let's lay this to one side.

The Witness: All right.

Mr. Ryan: I don't think the witness has referred to it yet, I want the record to so show.

Q. (By Mr. Ryan): Did you have a conversation in this period you are talking about with Mr. Herman Smith in which the name of attorney Mr. Whitelaw came up?

A. I will take that back, that slipped my mind. Yes, one day after that he asked me——

Q. One day after——

A. After this conversation with Mr. Osborne, I was working in the office one afternoon there, and Mr. Smith told me that Mr. Whitelaw had called him up from El Centro and that he would like to have me come over and see him in his office; in Mr. Whitelaw's office. [526]

(Testimony of Le Roy H. Davis.)

Q. Did Mr. Smith explain to you what Mr. Whitelaw wanted to see you about?

A. No, he didn't. He just—I guess what he wanted to see me about, but Mr. Smith didn't tell me what he wanted to see me about.

Q. What time of day was this?

A. About 2:00 o'clock in the afternoon.

Q. What was your regular working shift?

A. I worked from about 7:00 in the morning until 3:00 or 4:00 in the afternoon.

Q. And what did you do after Mr. Smith had given you this information?

A. He gave me permission to go over there so I took the company car and drove over to Mr. Whitelaw's office.

Q. About what time did you arrive at Mr. Whitelaw's office?

A. It was about 2:30; I went over right away.

Q. Was that over here in El Centro?

A. Yes, I went over to Mr. Whitelaw's office and Mr. Whitelaw was out. I waited in his office from 2:30 until about 15 minutes to 5:00 and Mr. Whitelaw didn't show up at any time during that time. The girls in the office said he would be back any time, but they didn't know just exactly when. I waited until about a quarter to 5:00 and then I left without having seen Mr. Whitelaw.

Q. Is that Mr. R. B. Whitelaw, the attorney in this case? [527]

A. I believe it was, I hadn't ever met the gentleman so I couldn't say.

(Testimony of Le Roy H. Davis.)

Q. Where did you go to go to his office, what building?

A. In the, I believe it is the Rehkopf Building.

Q. Here in El Centro? A. In El Centro.

Q. Did you receive full pay for that afternoon's work?

A. There was no deduction made from my monthly salary.

Q. At any time after this occasion when you went up to Mr. Whitelaw's office, did you have any further conversation with Mr. Herman Smith?

A. No, that is the last conversation until he called me down the Sunday morning I was dismissed.

Q. When about was that?

A. I did tell them when I came back I hadn't seen Mr. Whitelaw; of course, I reported that to him.

Q. When you came back from Mr. Whitelaw's office?

A. Yes, I reported that.

Q. Did Mr. Smith say anything then?

A. No.

Q. Did you continue to work for some time after that?

A. Yes, I worked for a short time after that. At this time I can't say just exactly how many days; it was just a matter of days after that.

Q. Then you say you were called down on a Sunday to the [528] office?

A. Sunday morning, yes.

Q. About when would you fix the date of that?

(Testimony of Le Roy H. Davis.)

A. Well, I remember, I am quite positive it was October 16th.

Q. Of 1941? A. 1941.

Q. It was on a Sunday morning, you are sure of that? A. Sunday morning, yes.

Q. How were you called down? Will you explain how you got there?

A. He sent Jack Garber up after me.

Q. Was it your custom to work on Sundays?

A. No, it wasn't; at that time of year I didn't work on Sunday, not very often.

Q. Did Jack Garber come to your home to get you? A. Yes, he came to my home for me.

Q. Then did you go down to the plant?

A. Yes, I went down immediately.

Q. And then did you see Mr. Smith?

A. Yes, he was in the office; I saw him.

Q. Was anyone present while you talked to him?

A. Garber was in the office; he was at another desk in the back of the room, typing.

Q. Will you tell us what Mr. Smith said to you on that [529] occasion?

Mr. Whitelaw? Just a minute. To which we object, it has already been asked and answered several times. He refreshed his recollection and got entirely two different versions after that.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

Q. (By Mr. Ryan): Will you tell us what was said, what Mr. Smith said?

(Testimony of Le Roy H. Davis.)

A. He told me in a roundabout way that there was no longer work for me to do there at that time of the year, that business had fallen off so much there wasn't any necessity for the three of us to be working there and that my work had been very satisfactory all the time I had been there, that I never—during the time I was in the—supervising the delivery of ice it had been delivered far more economically than it ever had been before. If I wanted to stick around there I could have my job about the first of the year, but he wouldn't guarantee I would have more than six or seven months of work a year from there on. He offered to give me a recommendation or do anything he could to get me a job somewhere else. He said he didn't think I would want to stick around just for the part time work they would be able to offer me from then on, he would advise me to get work somewhere else if I could. [530]

Q. Up to this time, did you say you had been working the year round?

A. I had been, yes, sir, the year round from the time I came into the office in 1935 until I was laid off in October, 1941, I worked continuously, except for vacation.

Q. Twelve months a year?

A. Twelve months a year, except for vacations.

Q. How long were vacations?

A. Two weeks usually. A week or two weeks, one week with pay and one week without pay usually.

(Testimony of Le Roy H. Davis.)

Q. This Jack Garber that worked in the office, what were his duties?

A. He was platform salesman, delivered ice to the public that came to the platform and he assisted with some of the book work, too.

Q. How long had he been working for the company?

A. He started that spring, I couldn't say about the month, but he started that spring or summer.

Q. Spring or summer of 1941? A. 1941.

Q. Do you know whether or not he continued to work?

A. He was working there after I left, I know I saw him out on the platform at times after I left. And I saw him once in the office, doing some office work after I left there.

Trial Examiner Mouritsen: Had he worked there as [531] long as you?

The Witness: Oh, no, he just worked there a month or two—a few months before I was laid off and I worked there from—started as a part time laborer in 1932 up to 1941. I was there nine years.

[532]

Cross Examination

Q. Now, Roy, going to the morning that Herman called you down, one Sunday morning, did he tell you that he had meant to speak to you Saturday, but hadn't had an opportunity?

A. I believe he did say something like that, it slipped my mind until you called my attention to it. I do recall that now, that you remind me.

(Testimony of Le Roy H. Davis.)

Q. Isn't it true that he said, when he laid you off, that they wouldn't have anything to do on the delivery platform until the coming lettuce season, until the selling season, that in substance?

A. Yes.

Q. Did you come back to work when the season started? A. Yes, that is what I said.

Q. Yes. Do you remember telling him then, Roy, for the first time you suspected something like this would happen, that you had made application for the union?

A. I beg your pardon?

Q. Do you remember telling Herman Smith on that day you thought something like this would happen, because you made application to a union?

[534]

A. Yes, I did.

Q. All right. Do you remember that he replied and said, "Roy, that is the first I knew you had made application to a union."

A. Yes, he did tell me that.

Q. And you never had told Herman Smith or Mr. Willard that you had made application to a union, did you? A. No, I hadn't told them.

Q. So far as you know, he didn't know it prior to that? A. As far as I could swear.

Mr. Petersen: To which we object on the ground that the witness has already testified concerning his meetings with Mr. Osborne and——

Trial Examiner Mouritsen: I will overrule the objection.

(Testimony of Le Roy H. Davis.)

Q. (By Mr. Smith): Roy, after the carrot season finished in the summer of 1941, while all that work was going on, changing from the Diesel engines to the electric motors, there was more office work than usual in the summer time, was there not?

A. Well, it was a different kind of office work. There wasn't any more of it, though.

Q. Didn't you and Herman have to write letters regarding supplies and priorities, and things like that?

A. Yes, we did. [535]

Q. And that was in addition to work that would not have had to be done had the plant not been going through this construction work?

A. Yes, there was some additional correspondence about that.

Q. Had it not been for that additional construction work there was very little office work, book work, to do in September and along in there?

A. It was rather slack about that time, yes, very slack.

Q. And the company wasn't selling any vegetable ice at all, was it?

A. No, not at that time of year.

Q. The clear ice business was practically nil, wasn't it?

A. That is right.

Q. Isn't it true, Roy, that the clear ice business had been dwindling consistently and steadily for several years prior to that?

A. Yes.

Q. Your work, during the vegetable shipping season, was as foreman of the delivery to the vegetable sheds, was it not?

(Testimony of Le Roy H. Davis.)

A. That was part of my work, yes.

Q. You attended to all of that in addition to helping him in the office?

A. That is right. [536]

Q. And you had an office or desk space of your own out on the platform? A. Yes.

Q. And a telephone out there?

A. That is right.

Q. Where you took orders from the sheds?

A. And did my book work out there at the same time.

Q. Yes. And do you know whether anyone was put on to take your place until the coming lettuce season in December of 1941?

A. I don't know what happened after I left, except from hearsay.

Q. I see.

A. I saw Jack Garber around there working on the platform, and I saw him working in the office, whether he did my work or not I couldn't say.

Q. Was there any delivering at all going on at the time you were laid off?

A. They were selling some clear ice, yes.

Q. Off the platform?

A. Off the platform, and through the trucks, too. May I ask if the statement about——

Trial Examiner Mouritsen: What do you want?

Q. (By Mr. Smith): Did you want to say something? Go ahead, I will wait until you are through. [537]

A. The hours I worked during the off season

(Testimony of Le Roy H. Davis.)

there and the hours I worked during the vegetable season.

Trial Examiner Mouritsen: Tell us what the situation is.

The Witness: During the vegetable season I came to work whenever it was necessary, whenever the sheds started up, and I worked until the sheds were through at night. And that involved a lot of hours, sometimes, and the understanding was, when I took the job at the monthly salary, at no over-time, I would be allowed to make up for some of the long hours I put in during the vegetable season by working shorter hours during the slack season.

Q. And you did, I suppose, work shorter hours during the slack season?

A. I put in my 40 hours a week, just the same, there was—sometimes there wasn't much to do, I will admit, but I put in my 40 hours a week.

Q. What did you have to do with the delivering of the clear ice at the time you were laid off?

A. There were times when the platform man wasn't around, I would sell ice off the platform, times when the platform man wasn't on duty, days off, I would come down and check the trucks out in the morning.

Q. That didn't take a very high percentage of your time? A. No. [538]

Q. Your duties concerned with clear ice?

A. It didn't take so very much time, except you had to be there, was all.

Mr. Smith: I think that is all.

(Testimony of Le Roy H. Davis.)

Cross Examination

By Mr. Yeager:

Q. Referring to this conversation you had with Mr. Osborne, did Mr. Osborne tell you at that conversation why he was coming to see you or at whose suggestion he was seeing you?

A. No, he—the impression he gave me, he was coming just on his own responsibility because he wanted to keep organized labor out of the Valley.

Q. Did he mention to you having talked with some of the other employees of the Holtville Ice?

A. He said he had talked to others, yes.

Q. Did he mention who he had talked to?

A. He had talked—before he came to me he had talked to Herman Pool and to Tom Herring, I am not quite positive about Tom Herring, but I know he talked to Herman Pool before he came to me.

Q. He told you that?

A. Yes, he told me that.

Q. Didn't he tell you Mr. Herring suggested he see you?

A. He did, that is right, I remember now that you remind me.

Q. I think you testified on direct examination that he [539] also told you he hadn't talked to Mr. Willard about this. A. That is what he told me, yes.

Q. Had you heard the conversation around the sheds about an employees union before Mr. Osborne came and mentioned it to you?

A. Oh, union, there had been union talk for a

(Testimony of Le Roy H. Davis.)

year or two before and it was mentioned in a general way. There was no specific plans made for a company union, no.

Q. You heard some of the employees discussing having an employees union there previously, though?

A. It had been talked about, yes; not as applied to the Holtville ice plant, no. There has been talk about it, what advantage there might be in it, it had been talked over in spare time during the vegetable ice season when there was a few minutes to spare there would be some talk about organized labor and the advantage of a company union. To the best of my remembrance, I don't remember anyone suggesting forming a company union of the Holtville ice plant. Is that what you meant?

Q. Yes. Thank you.

Mr. Yeager: That is all.

Cross Examination

Q. (By Mr. Whitelaw): Now, Mr. Davis, when you went over to the Union Hall to discuss this matter with some of the union men, do you know with whom you discussed it, can you [540] name any of the men with whom you talked?

A. No, that would be guesswork, it was discussed at times when I was—didn't have time to talk or sometimes when I wasn't very busy and I would take part in the conversation. I don't remember any one particular man.

Q. Did you hear said by any union organizer at that time, to yourself, or in your presence, to any

(Testimony of Le Roy H. Davis.)

other men, that particularly men known as the operators, the Diesel engineers, chances were they were going to be let off, if they joined the union they would get their back pay from their job? Did you hear any conversation such as that, in substance, probably not the same words?

A. Just in substance. From any union organizer?

Q. Yes. A. No, I don't recall any.

Q. Did you hear it from any of the union men in there?

A. No, I was in the office and it all came to me second-hand, anything like that I heard, rumors like that.

Q. You heard about what I said in substance?

A. I heard it, in substance, but not from any union organizer.

Q. From other men? A. From other men.

Q. From the Holtville Ice employees?

A. Yes. [541]

Q. You heard that from some of the operators, such as Mr. Stout?

A. He could have been one, yes, it was different ones. I wouldn't want to state specifically any one man had told me that.

Mr. Whitelaw: That is all.

Redirect Examination

By Mr. Ryan:

Q. Mr. Davis, while you were working for the company, do you know what the status of these delivery men were with respect to the handling of

(Testimony of Le Roy H. Davis.)

that clear ice after the end of the regular vegetable season? How they handled that ice, and how——

A. Yes.

Mr. Whitelaw: To which we object. The Examiner already has ruled that matter is incompetent, irrelevant and immaterial. The same thing was brought up, I think, by Mr. Petersen, and the Examiner ruled that it didn't make any difference how it was handled.

Mr. Ryan: I am interested in something else, than what Mr. Petersen went into, I think.

Q. (By Mr. Ryan): Did you take care of any book work on that matter, on those employees engaged in that particular type of work?

A. Yes, I handled that, I handled the sales slips, I made up their—the summary of their reports they turned in; [542] made up the reports from them when they checked in. I also made up the reports and collected the tax, the Social Security and Unemployment Tax from them at the end of each quarter when we made our quarterly Social Security and Unemployment Tax report to the Government.

Q. Was any unemployment tax paid on those men by the company? A. Yes.

Q. During the time——

A. Paid by them and collected from them each quarter.

Q. Even while they were distributing this clear ice?

A. Yes, while they were selling clear ice during

(Testimony of Le Roy H. Davis.)

the summer time, I collected the tax from them at the end of each quarter, made up the report from their sales, and then we took into account bad debts they had incurred and expenses and after deducting that I collected the percentage of tax from them, which was, in turn, remitted to the Government.

Q. Do you know whether or not the Government, at any time, took up the status of those particular individuals? A. Yes.

Q. With the Social Security Board?

A. Yes, I did, for the company.

Mr. Whitelaw: Just a minute. To which we object as being wholly incompetent and immaterial to—we are anxious to get through with this case, Mr. Examiner—— [543]

Mr. Smith: If you want to know whether or not they considered these employees, I am satisfied they are, they used company trucks and we are willing to stipulate they are.

Mr. Ryan: I am willing to accept that in lieu of the information. I want to ask him one more question.

Q. (By Mr. Ryan): Was there any set time for you to take your vacation in the summer time over this long period of employment?

A. No, that was a matter of agreement between me and the company, they were very nice about that, they tried to let me take my vacation when I wanted to; and almost always I got my vacation when I wanted to take it.

Mr. Ryan: No further questions.

(Testimony of Le Roy H. Davis.)

Mr. Petersen: Just one.

Recross Examination

By Mr. Petersen): Were you ever paid overtime after the wage and hour law went into effect for work performed in excess of 40 hours a week?

A. No, sir, I wasn't.

Q. (By Trial Examiner Mouritsen): You spoke about some understanding you had with reference to the fact you were to or that you would work long hours, or what was necessary during the busy season and then would be permitted to work shorter hours during the slack season?

A. Not work shorter hours, that I would have work the year [544] round.

Q. With whom did you have such an understanding?

A. When this 40-hour law was passed, before I knew the regulations of it, I suggested to Mr. Smith that it would be better to pay me by the month and then let me take care of the job, whatever hours were necessary to get the job done properly without overtime, and on just a straight monthly salary. I understood Mr. Smith took that up with Mr. Willard and it was satisfactory with him and he related it to me, I should go on a straight monthly salary of \$160 a month with the understanding I would work the hours necessary to protect my job.

Q. Do I understand you first took the matter up with Mr. Smith and then he later reported back

(Testimony of Le Roy H. Davis.)

to you that such an arrangement was satisfactory with Mr. Willard?

A. Yes, that was about the time the 40-hour law was passed and wage schedules were changed in accordance for the other men. I couldn't give you the date on that. I know it was before I knew the regulations or the application of the law very well; I found out more about it later.

Trial Examiner Mouritsen: I haven't anything else.

Recross Examination

Q. (By Mr. Smith): When you had this conversation with Herman Smith, did you just assume that you would have work the year round since you had agreed to stay and take a [545] monthly salary?

A. At this time I can't exactly say the exact words that he told me, that is the impression he gave me.

Q. Can you now state what he said that gave you that impression?

A. I can't give you the exact words, that has been years ago; I can't give you the exact words. I know that was the impression he gave me, I was to work whatever hours were necessary and he knew, too, it was the long hours during the vegetable season. I would be able to let up a little bit during the summer months to make up for that. It seemed like a fair proposition to me and I was willing to accept it under those terms.

Q. There really wasn't enough work to keep

(Testimony of Le Roy H. Davis.)

you busy an hour a day after the construction work was over, was there, Roy?

A. A little bit more than an hour, someone had to be there all the time to take care of the platform, that is the way it was.

Q. How did they handle it after you left, do you know?

A. They had a man to take care of it.

Q. One of the office men?

A. Yes, Jack Garber was kept on to do that same work.

Mr. Smith: I think that is all.

The Witness: I admit there wasn't much work to that, [546] but they had to have someone there to watch the platform unless we closed up, and we never did, customers came when they felt like it, when they wanted ice they wanted to get it. We couldn't tell them when to come, we just had to be there to deliver the ice; someone did.

Mr. Petersen: One more question, Mr. Examiner.

Recross Examination

Q. (By Mr. Petersen): Was your arrangement concerning your working longer hours during the vegetable ice season and shorter hours during the clear ice season made before the wage and hour law went into effect?

A. No, that was afterward when my salary was made a monthly salary, after the wage and hour law had passed and become effective.

Q. Up to that time you had been working on an hourly or weekly salary?

(Testimony of Le Roy H. Davis.)

A. Up to that time the wage scales had been changed several times. At one time I worked on a salary, a monthly salary, and other times I worked by the hour.

Mr. Petersen: That is all.

The Witness: Up to that time, up to the time of the passing and becoming effective of the 40-hour law I had been working by the hour for some time previous.

Recross Examination

Q. (By Mr. Smith): You suggested the salary, yourself? [547]

A. I suggested the monthly salary; I didn't suggest the amount.

Redirect Examination

Q. (By Mr. Ryan): While you were in charge of the platform, which was part of your duty as I understand, did you have any supervisory authority?

A. Yes, it was up to me to see my men were on duty at the proper time and to—I have hired men, it never became necessary to fire men, I suppose I could have if it had been necessary; I laid them off when the time came.

Recross Examination

Q. (By Mr. Petersen): You said you laid them off. Did you lay the men off on your own volition, or did you do that on direct orders from some higher official?

(Testimony of Le Roy H. Davis.)

A. No, I did it when I thought it was necessary, when it [548] was no longer necessary to have a man on duty to do a particular kind of work, I laid them off. It was left to my own discretion to do that.

Q. That was only the platform men, was it?

A. The platform men and the drivers were under my supervision. [549]

F. A. WILLARD,

called as a witness on behalf of respondent Holtville Ice Company, having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Smith): Mr. Willard, you started the Holtville Ice and Cold Storage Company yourself, did you not, as an individual?

A. Yes, sir.

Q. In what year?

A. I think that was in the fall of '25.

Q. After you operated as an individual for a year or two you formed a corporation, did you not?

A. That is correct, yes, sir.

Q. And what office, if any, do you hold in the corporation?

A. I am president and general manager.

Q. And you have held those two offices at all times?

A. Yes, sir.

(Testimony of F. A. Willard.)

Q. What is the business of the Holtville Ice and Cold Storage Company?

A. The manufacture of ice, principally vegetable shipments.

Q. And is your selling season steady the year round or do the sales depend on the harvest of seasonable crops? [556]

A. It depends on the sale of vegetables by seasons, the season will start and finish at different times, different years.

Q. And what vegetables are packed in the vicinity of the Holtville Ice Company for which ice is purchased from the Holtville Ice and Cold Storage Company?

A. Principally lettuce and carrots, although there are some other vegetables.

Q. The lettuce season in the vicinity of Holtville, when is lettuce shipped?

A. The shipments start usually the last of December and will finish any time from the middle of February to early in March.

Q. And is that the only time of the year in which you sell ice for the lettuce industry?

A. Yes, sir.

Q. Now, you said the other vegetable you sold ice for was carrots? A. Yes, sir.

Q. What is the shipping season for carrots in Imperial County?

A. The shipments will start the latter part of December and run through to the latter part of June or early in July.

(Testimony of F. A. Willard.)

Q. So that your selling season then runs from December to early in July each year? [557]

A. That is correct, with one exception, we have a contract with the P. F. E. that we deliver ice on the end of that season.

Q. On the end of the carrot season?

A. Yes.

Mr. Petersen: May we have P. F. E. in the record?

Trial Examiner Mouritsen: Is that Pacific Fruit Express?

The Witness: Yes.

Q. (By Mr. Smith) Approximately how many tons of ice are manufactured and sold annually?

A. Well, that has been a gradual increase, last year it was right at 45,000 tons.

Q. Does the plant sell clear ice now?

A. Yes, sir.

Q. Do you deliver clear ice? A. Yes, sir.

Q. Can you give us a very brief history of the manufacture and sale of clear ice for domestic purposes?

A. Our clear ice season, of course, starts and continues with the hot weather. It will start, oh, it will start the latter part of May, and increase to June, and then it will run steadily through June, July, fall off in August, and fall off in September, and we will stop delivering in October—not stop entirely, but practically through in October.

Q. I see. And how many men do you have de-

(Testimony of F. A. Willard.)

livering clear [558] ice in the peak of the season?

A. We used to have six. Now we have two.

Q. And what has happened to the business?

A. The mechanical refrigerators have taken practically all that business. We used to sell 8000 tons of clear ice and last year we sold 1500.

Trial Examiner Mouritsen: The peak of your clear ice business comes after the peak of your vegetable ice business has passed, is that right?

The Witness: That is correct, yes.

Q. (By Mr. Smith) What has been the custom of the Holtville Ice and Cold Storage Company regarding laying off employees after the completion of the carrot shipping season around July 1st of each year?

A. Well, I explaimed that once before. It had been the practice of the company, so far as possible, to hold any maintenance work or other work around the plant that could be held until the slack period and then we would use our own men to do as much of that work as we could.

Q. Well, what has been the custom as to laying off some men each year at the end of the carrot shipping season?

A. We always laid off some men.

Q. How long were those men laid off for?

A. Well, they are laid off until the season starts again.

Q. All right. Now then, when do you start the plant [559] manufacturing ice to get ready to sell to the sheds for delivery in December each year?

(Testimony of F. A. Willard.)

A. Well, our first operation is to start up the plant and fill our storages.

Q. All right. About when each year do you start your plant?

A. We figure by starting the 1st of November we can fill our storages and have our storages filled in time to take care of the shipments for the sales when they get under way in January.

Q. All right. And then do you keep the plant operating at capacity during the lettuce and carrot season?

A. We try to, yes.

Q. Now, what, Mr. Willard, has been the method of getting the men back to work in the fall after having laid them off for the slack season in the summer and early fall?

A. Previously we never had a set date as to when we would start the plant. We would always try to estimate the amount of ice we would probably handle for the coming season and from that we would figure how much ice we would have to put in storage and we would start our plant in time to get that in storage by the first of January.

Q. That doesn't quite answer my question. What has been the method of getting the men back to work when the plant starts manufacturing ice in the fall? [560]

A. Whenever we decided when the plant was going to start, I would tell the superintendent and he would get word to the men some way, usually some of the boys would be around and tell them and they would go and tell somebody else, and also lots

(Testimony of F. A. Willard.)

of them would be coming around the plant about that time, too.

Q. Was it customary to let those employees come back to work sort of automatically that had given satisfactory service? A. Yes, sir.

Q. That was done without any definite agreement as to the subject, I take it? A. Yes.

Q. Now, who, Mr. Willard, selects the employees in the various departments of the plant, to start manufacturing ice in the fall?

A. Ordinarily the superintendent and myself.

Q. What departments are there in the plant, what are the divisions that you make out there?

A. Well, there is the—there used to be what we called the engine room, and the tank room, and the storage, and the platform. The engine room, of course, has been eliminated.

Q. I believe you covered in your previous testimony the duties of the men in each of those four departments, did you? [561] A. I think so.

Q. I won't go into that again. Now, Mr. Willard, what change, if any, was made in the manufacturing plant in the summer of 1941?

A. We took out the Diesel engines which furnished the power for the plant up to that time, and replaced them with electric motors. We also made an addition to our freezing tank.

Q. And that change-over made it possible for you to get along with fewer employees in manufacturing the same amount or more ice than you had previously manufactured? A. Yes, it did.

Q. How many less employees did that permit

(Testimony of F. A. Willard.)

you to operate with by changing to the electric power?

A. We figured we were going to save eight employees.

Q. And what had been the duties of those eight employees that were used when you had the Diesel power?

A. They operated the Diesel engines and took care of the maintenance and repair of the engines.

Q. How many regular Diesel operators did you ever keep at all times when you had the Diesel engines?

A. We had three Diesel operators and a relief man, and then we had two maintenance men. I believe the last year we had four engine operators.

Q. I see. [562]

Trial Examiner Mouritsen: You mean four and a relief?

The Witness: Four and a relief.

Q. (By Mr. Smith) When you made this change-over from Diesel power to electric power, who then decided which of the old men were to be laid off? A. The superintendent and myself.

Q. All right. And when was it that you and the superintendent got together to discuss this situation?

A. Well, that was in the fall of '41, just what date I couldn't say.

Q. Prior to the time the plant started up to manufacture ice?

A. Oh, yes; yes. I returned the latter part of

(Testimony of F. A. Willard.)

September and we started the plant some time about the first of November, I believe. And had to decide on it in the meantime.

Q. Yes. Now, as I understand it, you designate your ice manufacturing and selling season by calling it the '40-'41 season? A. '41-'42 season.

Q. What do you mean when you refer to the '40-'41 season for manufacturing and selling?

A. For instance, we start our plant in '41 and we finish that season in '42. The '40-'41 would include a total vegetable season.

Q. All right. You refer to that, then, when you are [563] speaking of the '40-'41 season as the fall of '41 and up to and including the selling season——

Mr. Whitelaw: Fall of '40.

Q. (By Mr. Smith) As the fall of '40 and up to and including July of '41, do you?

A. Yes, sir.

Trial Examiner Mouritsen: Before we leave that, you say you and the superintendent decide that. Who was the superintendent?

The Witness: Mr. Pool.

Q. (By Mr. Smith) And when you refer to some of these documents that we are going to show in evidence, to '41-'42 season, you mean by that the fall of '41 up to and including June of '42?

A. Correct, yes, sir.

Q. Now, Mr. Willard, going to these various men that were laid off. The first one of the men named was Arthur Standifer. His services, I understand, were terminated on the 3rd day of Oc-

(Testimony of F. A. Willard.)

tober, 1941. I believe he testified he had been a can puller. Did he ever apply to you for reinstatement?

A. No, sir.

Q. Did you have any work for him to do after October, October 3, 1941, at the time he was laid off?

A. It was work but we figured there was a more satisfactory [564] men to do it.

Trial Examiner Mouritsen: We will take a short recess.

(A short recess was taken.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Smith): Go ahead and complete your answer, Mr. Willard.

A. It was due to laying off the engine crew, we had to lay off some men, we couldn't put them all back to work. We selected the men we thought were best fitted for the work we had to do.

Q. He didn't happen to be——

Mr. Petersen: I move to strike that last part of his statement as being a voluntary contribution and not responsive to the question.

Mr. Smith: It certainly is responsive.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Smith): I believe you said he never did apply for reinstatement? A. No.

Trial Examiner Mouritsen: He never did apply to you?

The Witness: No.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): About the employee Lester Hart, Mr. Willard. He had worked there a long time, had he not? [565] A. Yes, sir.

Q. And you might just describe what work he did.

A. Well, his principal work was the maintenance of the Diesel engines, but he did work around the plant and had worked at the packing sheds.

Q. What percentage of his work would you say was in connection with the Diesel engines?

A. Well, I would say it was better than 50 per cent he was *no* the Diesels.

Q. And when he was on the stand he testified he spent quite a lot of time making ice chutes. When were the last ice chutes made at the plant?

A. My recollection, the last chutes were made two years ago.

Q. Have there been any chutes made since that time? A. No.

Q. Where were those chutes made?

A. Right in the plant.

Q. In the storeroom?

A. No, they were made in the back end of the engine room.

Q. I see. Are they of a temporary nature or a permanent nature? A. They are permanent.

Q. Do you need any more ice chutes made over there now? A. Not until those wear out. [566]

Q. Is there any chance of those wearing out right away? A. I don't think so.

Q. He also testified he had in the past spent some

(Testimony of F. A. Willard.)

time repairing the cans that are used in the freezing of ice. What do you say about those cans?

A. Well, the tank that required the most work on the cans was our first tank, the cans were replaced. I think they were replaced two years ago with new cans.

Q. Has it been necessary to do any welding or straightening on the new cans since they have been purchased? A. No, sir.

Q. How many years old were the old cans when he worked out there?

A. They have been in there since the plant started, that was from '25 to '43.

Q. How many cans are there to fill the No. 1 tank?

A. Well, sir, I couldn't tell you offhand; I think there are 18 rows of 24 cans to a row.

Q. About what is the size of each can?

A. The dimensions of the can are 11 by 22 by 44 inches.

Q. According to my computation that would be 18 rows of 24 cans, would be 432 cans. Did you buy all new ones for that No. 1 tank? A. Yes.

Q. To replace those that had been there since the year [567] 1925? A. Yes, sir.

Q. Now, Mr. Hart also testified that he spent some time doing repair work of the machinery in the sheds, Mr. Willard. Now, I will ask you whether or not you have made written contracts on each shed with the lessee covering maintenance of the machinery which you included with the shed?

(Testimony of F. A. Willard.)

A. That is true.

Q. Now, I have one of the original contracts here. I show you this, and ask you if it is the original contract now in existence between the Holtville Ice and Cold Storage Company and the K. K. Sharp Company, one of your tenants.

A. Yes, sir.

Q. What is the date of the contract?

A. Well, it was signed the 30th day of December, '39.

Q. For how many years does it cover?

A. Five years.

Q. Now, will you look at paragraph 8 in that contract—I think that is the number.

A. Yes, sir.

Q. And I will ask you to state if that, in substance, is included in all of the leases covering all of the sheds that are owned by the Holtville Ice and Cold Storage Company.

A. It is. [568]

Mr. Smith: I would like to read into the record—it reads as follows: “It is mutually agreed that First Party will not be called upon to make any repairs or alterations or for maintenance of the packing house or equipment during the existence of this agreement, and that Second Party will pay the cost of any necessary repairs or maintenance charges. First Party, however, does agree that if Second Party employs First Party to make repairs or alterations that First Party will make such repairs or alterations at actual cost to First Party.

(Testimony of F. A. Willard.)

“A list of equipment, fixtures, and machinery to be [569] kept on said packing house and to be used by Lessee, is attached hereto and made a part hereof, and Lessee acknowledges receipt of all items listed.”

Now, the contract which I read from is dated the 1st day of December, 1939, by and between the Holtville Ice and Cold Storage Company, a corporation, first party, called lessor, and Kenneth K. Sharp, second party, called the lessee. Now, Mr. Willard, do the various lessees of the various packing houses leased by the Ice Company repair the machinery in their particular sheds as provided in that contract?

A. Yes, they do. The larger packing sheds now have a man of their own that is on the shed all the time. And the smaller ones have some one around that does the most of the work themselves.

Q. Did you in years back do more of that work than you have done in later years?

A. Yes, sir.

Q. Did you do it gratis or did you charge the tenants?

A. We tried to charge for it, but we couldn't collect for it.

Q. So what change did you make in your practice? A. We stopped doing the work.

Q. Although that provision was contained in previous contracts in previous years you started living up to it [570] more strictly in the past few years? A. That is correct.

Mr. Petersen: I object. I ask the question and

(Testimony of F. A. Willard.)

answer be stricken as ambiguous and vague because it states both parties can make repairs.

Trial Examiner Mouritsen: I think it can be cleared up on cross examination. I will deny the motion.

Q. (By Mr. Smith): Mr. Willard, was Mr. Hart's work satisfactory when he was there?

A. Yes, sir.

Q. And why was he laid off?

A. Well, we had no more work that was in the line he was doing. I didn't feel he was fitted to do the kind of work we had left.

Q. Was anyone ever employed to take his place?

A. No, sir.

Q. Now, regarding the employee Roy Davis. I will ask you, Mr. Willard, when you first discussed—strike that. I will ask you if you ever discussed doing away with his services at any time prior to the time he was laid off? A. Yes, sir, we had.

Q. When was it discussed and with whom did you discuss that?

A. When I went away in June I left instructions with Mr. Smith to let Roy go at the end of the vegetable season.

Q. And that would be when? [571]

A. The latter part of June.

Q. Why did you do that?

A. Well, Roy's work for six months of the year was a total loss to us, we didn't have any work for him to do, and the clear ice season got so low during

(Testimony of F. A. Willard.)

the summer that we just had to reduce expenses during that time of year.

Q. All right. You instructed Herman Smith to let him go at the end of the vegetable shipping season in 1941, which would be around July 1st?

A. Yes.

Q. Now, were you, yourself, away from Imperial County from that time on until some time late in September?

A. Yes, sir.

Q. When was the first time that you knew that your instructions had not been carried out regarding letting him go?

A. When I came back the latter part of September.

Q. And did you have any conversation with Herman Smith when you came back the latter part of September?

A. I did.

Q. What was the conversation?

A. I asked him why Roy was still on.

Q. What did he say?

A. Well, he said that he lost heart and figured he would keep Roy on for a while longer.

Q. What further conversation did you have then? [572]

A. I told him I thought he was making a mistake and he had better let him go right then.

Q. And did you say anything to Herman about re-employing him at any future time?

A. I couldn't say, I don't recall any.

Q. Now, at this time, Mr. Willard, had anyone

(Testimony of F. A. Willard.)

ever told you he had made application for a union or to a union? A. No, sir.

Q. And in your conversation with Herman Smith, was it ever brought out by him that he had any such knowledge? A. No, sir.

Q. Had you heard it from anyone?

A. No, sir.

Q. Now, was anyone ever employed on a full yearly basis to take the place of Roy Davis?

A. No, sir, there was not.

Q. Who handled the work on the delivery platform after his services were terminated?

A. One of the drivers.

Trial Examiner Mouritsen: Do you know which one?

The Witness: Tom Herring.

Trial Examiner Mouritsen: Has he been employed steadily since that time or has he been laid off from time to time?

A. No, he has been employed steadily. [573]

Mr. Petersen: The platform. May we ask that on voir dire?

Mr. Smith: We will come to that.

Q. (By Mr. Smith): Just tell how that work is handled now, Mr. Willard, the work that Roy Davis did.

A. Tom Herring handled it through the vegetable season and after the vegetable season is over he operates a truck; he delivers clear ice.

Q. And who takes the delivery orders for ice?

(Testimony of F. A. Willard.)

Davis said he used to take orders for ice over the telephone.

A. Tom takes that now, Tom Herring.

Q. He does that as well as deliver?

A. No, the delivery he does is in the summer when there is no vegetable ice.

Q. Oh, I see. In other words, there is work there for a man during the vegetable ice season?

A. Oh, yes.

Q. But no work for about five months, to speak of?

A. Six months.

Trial Examiner Mouritsen: Do you still have a man that takes orders for clear ice on the platform during the summer?

The Witness: No, never had one.

Trial Examiner Mouritsen: You never had one?

The Witness: No man on the platform. The man on [574] the platform is on the platform to handle the vegetable ice only.

Q. (By Trial Examiner Mouritsen): Do you have any call for clear ice, people that drive up during the summer?

A. Oh, yes.

Q. That is taken care of by someone?

A. Yes.

Q. Who does that?

A. This boy that puts in part time in the office and the platform. I can't recall his name right now.

Q. Is that Garber?

A. Garber, Jack Garber, yes, sir.

Q. Has he been in steadily since 1941?

(Testimony of F. A. Willard.)

A. Well, now, I couldn't say just when he came on. He came on first with us, working part time, went to school part time. And he finished school and he has been with us steadily ever since.

Q. (By Mr. Smith): He worked afternoons when he was going to junior college, didn't he?

A. Yes.

Mr. Petersen: Fix the time that that occurred.

Trial Examiner Mouritsen: Hasn't he been on steadily in 1942 and 1943 to date?

The Witness: Well, I think he came on some time in the spring of '42. Herman Smith will bring that out for [575] you if you want it.

Q. (By Mr. Smith): All right. Now, going to the witness H. C. Fredenburg. He testified he had worked as a truck driver and a clear ice delivery man and did repair work around the Diesel engines. Was there any clear ice to deliver, Mr. Willard, after October of 1941, that is, for the next few months?

A. After October?

Q. Yes.

A. No, sir.

Q. Do you know what route Mr. Fredenburg had been taking care of? That is, had he been taking care of any business houses in town?

A. No, he was on a country route.

Q. Delivering ice to farmers?

A. Yes.

Q. Was his route worked by anyone else after October?

A. Well, it was doubled up with another truck

(Testimony of F. A. Willard.)

so that when he was gone there was another truck eliminated.

Q. I see. And did he ever apply for reinstatement? A. Yes, sir.

Q. Fredenburg? A. Yes.

Q. When?

A. He came to me in the office one day and asked if we [576] were going to use him that winter, and I told him no, I was not.

Q. Then why did you tell him that?

A. I told him that we couldn't take care of all the men we had previously and we just had to let some of them go.

Mr. Ryan: Find out the time when that was.

Q. (By Mr. Smith): Do you know what date that was, approximately?

A. Well, it was in the fall of '41, I believe it was after the plant had started.

Q. Now, Perry T. Blankenship. Wait a minute. Let's go back to Fredenburg a minute. What had Fredenburg worked on in addition to delivering ice?

A. Sometimes he worked in the storage, storing ice and I think that fall we got work for him with the contractor that was working at the plant.

Q. I believe he testified he did some repair work around the Diesel engines also, do you remember that?

A. No, I don't think he did. He might have wiped up some grease around them, something like that, he wouldn't do any repair work on the engines.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: Was he a truck driver during the preceding vegetable ice season?

The Witness: He was, yes.

Q. (By Mr. Smith): Now, the employee Perry Blankenship. [577] He said he worked until August 15, 1941, and then he was laid off and then he worked one day in September cleaning up flood water one Sunday. What was his work in the plant, Mr. Willard?

A. I believe he had worked in the storage and also pulled ice.

Q. He testified he was a relief operator for the Diesel engines.

A. He may have been.

Q. Did he ever apply to you for reinstatement?

A. No, sir.

Mr. Ryan: That has reference to Mr. Willard personally, I take it, the question?

Mr. Smith: Surely, that is all he can answer to.

Trial Examiner Mouritsen: On respondent Ice Company's Exhibit 1-A his name is set out as B-l-a-n-d—I presume that should be Blankenship.

Mr. Smith: I think so.

Trial Examiner Mouritsen: He is listed under the can pullers on that.

Q. (By Mr. Smith): Did you have any reason at all for failing to rehire him, except that you didn't have enough jobs to go around?

A. That is all, I did not.

Q. What would your answer be to that same question as to Fredenburg. [578]

A. Same thing.

(Testimony of F. A. Willard.)

Q. Now, the witness Herman Pool testified that he was laid off by his brother Pete on or about September 30, 1941. Had you heard any talk around the plant that there was dissatisfaction among the men because of Pete Pool giving Herman Pool the easiest work and extra work, or anything of that kind? A. Yes, I had.

Mr. Petersen: May we fix a time, somewhat approximate time?

Trial Examnier Mouritsen: He is going into it. The answer was merely he had heard it. We will now hear the details.

Q. (By Mr. Smith): When had you heard something of that nature?

A. I had heard it several times.

Trial Examiner Mouritsen: When did you first hear it?

The Witness: Probably a year before we changed over in the plant.

Trial Examiner Mouritsen: That would be when, in July of 1940, or August?

The Witness: No, I couldn't pin it down that definite, there was no direct complaint came to me, some of the boys would tell me about it so I knew there was feeling in the plant. [579]

Q. (By Mr. Smith): What was the substance—

Trial Examiner Mouritsen: Now, wait a minute. Let's find out who the individuals were, find out as definitely as we can what there was to this.

Q. (By Mr. Smith): Do you now recall who you talked to about Herman Pool and Pete Pool?

(Testimony of F. A. Willard.)

A. I didn't talk with anyone about it. The information came to me, I didn't solicit it. I know, in one instance, Herman Smith told me about it.

Q. I see.

A. He will probably remember the date.

Mr. Petersen: Move to strike the response to all this line of questioning.

Trial Examiner Mouritsen: I will strike all except he said Herman Smith told him about it.

Q. (By Mr. Smith): Do you remember anyone else that told you about it?

A. I think Herman told me about two instances.

Q. Can you fix the date any more certain than that?

A. No, I can't.

Mr. Ryan: That is Herman Smith?

The Witness: Herman Smith, yes.

Trial Examiner Mouritsen: Let's find out what Smith said.

Q. (By Mr. Smith): Will you give us the substance of [580] what he told you?

A. He told me there was a complaint about Herman, about his brother showing partiality, and there was some feeling among the men about it.

Q. Did he tell you what man or men had talked to him?

A. No, I don't recall that. I know one instance he told me there was a complaint about setting Herman over somebody that was ahead of him. And there was another complaint about getting over time that he wasn't entitled to, or more than he was entitled to, something to that effect.

(Testimony of F. A. Willard.)

Mr. Petersen: Again I move to strike the entire answer as being ambiguous and vague and not responsive and entirely hearsay.

Trial Examiner Mouritsen: I will deny the motion. You have fixed the time, I think, as about a year before the change-over.

Was that the first time you heard from Herman Smith about it?

The Witness: Well, I wouldn't say that, it was during that year.

Q. (By Mr. Smith): Do you know when the last time was that you discussed it with Herman Smith?

A. No, I couldn't say that, I don't know definitely.

Q. Was there any discussion about the advisability of keeping Herman Pool immediately prior to the time he was let [581] off? A. No.

Mr. Petersen: We are going to object to that question, it has already been asked and answered.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: No, there was no talk about it. I gave instructions what to do about it.

Q. (By Mr. Smith): Who did you give instructions to? A. The superintendent.

Q. Who was the superintendent?

A. Pete Pool, his brother.

Q. What did you say to Pete Pool?

Mr. Petersen: Fix a time or date.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: All right, Mr. Petersen.

Q. (By Mr. Smith): Tell us about when you talked to Pete Pool about it.

A. When we were going over the list of men to put to work in the plant when it started up again.

Q. That was in September of 1941?

A. September or October, probably in October.

Trial Examiner Mouritsen: You say you got back the latter part of September. What does that mean, September 30th or when?

Q. (By Mr. Smith: Can you give us the substance—— [582]

Trial Examiner Mouritsen: I would like to find out about this.

Mr. Smith: Oh.

Trial Examiner Mouritsen: When he got back.

The Witness: It must have been around September 25th I got back, because I know I was in Eugene on September 15th. My recollection is it took five days to come down.

Trial Examiner Mouritsen: What would that be, September 20th or September 25th?

The Witness: 20th, that is right.

Q. (By Mr. Smith): Well, can you give us the substance of what you said to Pete?

A. I told Pete that we wouldn't have any more relatives around the plant.

Q. By the way, you had also had another brother, Bailey Pool, from the same family, had you not?

(Testimony of F. A. Willard.)

A. Yes, but he wasn't there at that time.

Q. What had Herman Pool been doing at the Holtville Ice and Cold Storage Company during the last year of his employment?

A. In the engine room, operating Diesels.

Q. And what work was he used for in the summer time after the vegetable ice season ended about July 1st, 1941?

A. He was one of the ones that——

Trial Examiner Mouritsen: Can't somebody else tell [583] us better about this? This witness wasn't here during all that period.

Mr. Smith: He may have given instructions, I don't know.

Q. (By Mr. Smith): Do you know what he did, Mr. Willard, while you were gone?

A. To the best of my knowledge he did repair work around the plant. Before I would go away there would be a list of work to be done which I would approve and they would go ahead and do it. I do know he was on—at the plant all during the summer except when he was away for his vacation.

Q. All right. What then would you say was the reason why that employee was not on after September 30th, 1941?

A. Principally because of the feeling of the men toward him, his favoritism.

Mr. Petersen: Mr. Examiner, once again I am going to object to these ambiguous answers, unless the definition of the men can be definitely set forth by Mr. Smith.

(Testimony of F. A. Willard.)

Mr. Smith: Definition of the men?

Mr. Petersen: The feeling of the men against him.

Mr. Smith: That goes to the weight of it.

Trial Examiner Mouritsen: I don't know of any better witness than this witness who would know the reason he would have for letting him out. I will permit it. [584]

Q. (By Mr. Smith): What other reason, if any, Mr. Willard, did you have?

A. That was practically the only reason. No complaint about his work.

Q. Now the employee Herman Fruhn. He testified he had been a crane operator. Herman Fruhn testified, I believe, that he had a couple of conversations with you. Did he? A. No, sir.

Q. Did he have any conversation with you?

A. He had one.

Q. When was it?

A. That was just after the plant had started.

Q. What did he say to you and what did you say to him?

A. He asked me why he didn't get his job back, and I told him that we didn't have jobs for all the boys and just had to let him go.

Q. Now, do you recall whether or not Herman Smith ever asked you later in the year, November or December, if he could re-employ Herman in some capacity? A. Yes, he did.

Q. About when was that?

A. I think that was in December.

(Testimony of F. A. Willard.)

Q. Of 1941? A. Yes, sir.

Q. Do you remember what Herman said to you and what you [585] said to him?

A. He told me that——

Q. Herman Smith said to you I am talking about now.

A. Herman said that Fruhn was back and wanted to get some work, and we didn't have any. I told him we didn't have any work. Herman said there was a place in the storeroom, and I told him I had no objection to putting him on if he wanted to go in there.

Q. Did you put him on? A. Yes.

Q. Did Fruhn stay there?

A. He stayed one day—or one shift. He worked one shift.

Q. Then what happened to him?

A. He quit.

Q. Did he ever talk to you again after that?

A. No, sir.

Q. Did he ever apply for reinstatement?

A. No, sir.

Q. He had been a crane operator for several years, Mr. Willard. What reason, if any, was there he wasn't selected to operate the crane when the plant started up in November, 1941?

A. Well, we always had a lot of trouble with Herman. He liked to monkey with the machinery, he was always adjust- [586] ing the crane; when he got through adjusting it we had to get somebody to fix it up; just couldn't keep him away from it.

(Testimony of F. A. Willard.)

Q. Did you say anything to Herman Smith about that when he wanted to put him back on?

A. I don't recall that I did. I might have.

Q. By the way, who did you put on the cranes in the fall of 1941?

A. Well, we have a list of them here. Put on M. K. Stout and G. Harlan and L. Gettle.

Q. Now, what was there about those men that made you select those over Fruhn?

A. They are better men.

Q. In what way?

A. The way they did the work.

Trial Examiner Mouritsen: Had they all been ice pullers before?

The Witness: No. Stout hadn't pulled ice before; the others had.

Q. (By Mr. Smith): Stout had been working as a Diesel engine operator? A. Yes.

Q. Real mechanic? A. Yes.

Q. Does a man need some mechanical ability to operate that [587] crane? A. Not necessarily.

Q. He shouldn't monkey with the machinery, is that right? A. That is it exactly.

Q. Now, Mr. Willard, when you and Pete Pool selected the crew to start operations in the fall of 1941, was there any question discussed between you and Pete as to whether any of them had or had not made application to join a union or had joined a union? A. No.

Mr. Ryan: I object, I think it calls for a self-serving declaration.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): Was there any discussion at all between you and Pete as to which ones had or had not made application to join a union?

A. No, there was not.

Q. Was the fact that some had applied for union membership considered by you at all in selecting the men to start the plant? A. No, sir.

Q. Did you select some five that had——

Mr. Petersen: To which we are going to object on the basis the witness has testified he didn't know who was [588] members of the union or not?

Trial Examiner Mouritsen: I will overrule the objection.

Mr. Smith: It has been brought out in the testimony.

Trial Examiner Mouritsen: I overruled the objection.

Q. (By Mr. Smith): You sat throughout this hearing, did you not, Mr. Willard? A. Yes.

Q. You have heard the names mentioned several times of those that did make applications to join the union? A. Yes.

Q. Of those men named that did make application to join the union, did you put back in the fall of 1941 some of those men to start operations?

A. Yes.

Q. Can you tell us the names of those that were put back that had made applications, according to the testimony here?

(Testimony of F. A. Willard.)

Mr. Petersen: May we have the date they were put back? The fall is rather ambiguous.

Mr. Smith: I can give you that from the payroll.

Trial Examiner Mouritsen: It is on the payroll, it is in evidence as Respondent's 2.

Mr. Petersen: No, it just shows who was working.

Trial Examiner Mouritsen: No, it has a date on it, October 29, 1941. [589]

Mr. Petersen: All right.

Q. (By Mr. Smith): First I will ask you about the employee Henry Miller. Did you try to put him back to work? A. Yes, sir.

Q. In what way, what did you do to get him back?

A. When we were ready to start up he was one of the ones we had selected and Mr. Pool sent word to him, I believe he phoned him, to come in on a certain date when we were going to start the plant. We found he had already left and had gone up to the Coast to work.

Q. And then what others that had made application there for the union did you put back to work, of those several men that had made applications according to the testimony here?

A. You mean made application to the union?

Q. Yes.

A. Well, I couldn't tell you that without referring to that list we made up. There was H. G. Miller.

(Testimony of F. A. Willard.)

Q. He was requested to come back?

A. Yes, sir. The others we did put to work, M. K. Stout, H. Fruhn, R. H. Ireland, Tom Herring, G. P. Drinkard.

Q. Those men are still working over there?

A. Of course, Miller isn't there, and Fruhn is not there.

Q. They were both offered employment, though, were they?

A. Yes, Fruhn did work one day; Miller did not come to [590] work.

Mr. Ryan: Fruhn was offered the storeroom job long after the plant had started?

Mr. Smith: Shortly after it was started.

Mr. Petersen: Long.

Trial Examiner Mouritsen: The record will show just what he testified and what Mr. Willard has already testified. However, he wasn't one of those who started on October 29, 1941.

The Witness: Fruhn?

Trial Examiner Mouritsen: Fruhn.

The Witness: No, sir.

Q. (By Mr. Smith): Mr. Willard, now, when you returned in September of 1941 from being out of the Valley, did you have a conversation with Hugh Osborne? A. Yes, sir.

Q. And do you remember what date it was?

A. Well, it was soon after the 25th of September.

Q. How was the conversation held?

A. I phoned Mr. Osborne.

(Testimony of F. A. Willard.)

Q. And can you tell what you said and what he said to you?

A. Soon after I found that there were union activities in the plant, I phoned Hugh and told him that there was some union activities around the plant and asked him if he knew anything about it.

[591]

Q. What did he say?

A. He said yes, he knew all about it.

Q. Anything else said?

A. I asked him what, if anything, I should do about it. He said, "Do nothing." He said, "I will be over in a few days and see you."

Q. Now, Mr. Willard, going back to the year 1936, you have heretofore testified that the Holtville Ice and Cold Storage Company commenced making contributions to the Associated Farmers in the year 1936. When you started making contributions to the Associated Farmers, did you expect anything in return?

A. Nothing that I knew of at the time, no.

Q. Were you told that you would get anything in return for your contributions? A. No, sir.

Q. What did you understand to be the purpose of the Associated Farmers at the time you made your contributions?

Trial Examiner Mouritsen: That is asking what anybody told him about the purpose of a thing like that. Ask him if he asked anyone about the purposes.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): Were you informed by anyone about the purpose of the Associated Farmers when you commenced making contributions?

A. Well, I expect I already knew something about the [592] purpose of the Associated Farmers from reading about it in the papers.

Trial Examiner Mouritsen: Did Mr. Osborne come to you and give you a sales talk before you started to contribute?

The Witness: Yes, sir.

Trial Examiner Mouritsen: Let's find out what he said on that occasion.

Q. (By Mr. Smith): Do you remember the substance of what he said?

A. He was soliciting funds for the Associated Farmers. And told me it was an organization of farmers who were watching and guarding against subversive activities and Communist activities, and I gave him some money.

Q. You say you had received information on the outside, through the newspapers, and so forth?

A. I believe I had read what the Associated Farmers were doing.

Trial Examiner Mouritsen: Over what period had you read about them?

The Witness: I think we have shown the first contribution was in 1936.

Trial Examiner Mouritsen: Well, in other words, I suspect that Mr. Smith is going to ask you what was the gist of what you read about. I would like

(Testimony of F. A. Willard.)

to find out over what [593] period, so if there is a possible check-up on that——

The Witness: I can tell you an incident that was going on at that time, although it won't fix the date for me or anyone else. I do know what was going on, it can be checked up. At that time we were shipping fuel oil for our engines in from Los Angeles and at the same time the farmers were having trouble delivering their crops into Los Angeles.

Trial Examiner Mouritsen: What kind of trouble?

The Witness: Tipping trucks over and beating up drivers, and damaging trucks.

Trial Examiner Mouritsen: Was it the Communists that were doing that?

The Witness: I couldn't tell you who was doing it.

Trial Examiner Mouritsen: Did you suspect it might have something to do with labor organizations?

The Witness: I did, yes, sir.

Trial Examiner Mouritsen: What was the difficulty about the fuel oil?

The Witness: Our fuel oil at that time was coming down by truck, and we were concerned about some of our fuel oil being stopped on the highways. And Hugh told me if it was necessary they would go into Los Angeles and get the fuel oil and bring it out, and that was good enough for me.

Q. (By Mr. Smith): Now, did you, as a fact,

(Testimony of F. A. Willard.)

ever get [594] anything from the Associated Farmers that you know of? A. No, sir.

Q. Mr. Willard, did you ever instruct the Associated Farmers to form an employees association in your plant or to advise the employees to form one? A. No, sir.

Mr. Ryan: I object to that, it calls for a conclusion.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): Or did you ever instruct Hugh T. Osborne to form an employees association or to advise the employees to form one?

A. No, sir.

Mr. Ryan: I object to that, also calls for a conclusion; move to strike it.

Trial Examiner Mouritsen: I will overrule the objection and deny the motion to strike.

Q. (By Mr. Smith): Mr. Willard, what was the first knowledge you had that an employees association had been formed?

Trial Examiner Mouritsen: Among your employees.

Q. (By Mr. Smith): Among your employees.

A. It was at the time the bargaining committee of the employees association came to see me.

Q. (By Mr. Smith): And can you fix the date of that [595] approximately?

A. It must have been in October some time.

Q. 1941? A. Yes, sir.

Q. And do you remember who first called on you,

(Testimony of F. A. Willard.)

that is, whether it was a committee or whether it was one man or several?

A. No, it was—there were at least two. Hugh Osborne came in with them.

Q. When?

A. When this committee came in.

Q. The first time or the second or third time, or when? A. The first time.

Q. The first time?

A. Yes. Hugh came in with them and introduced them as a bargaining committee of the employees association.

Q. Tell us what happened then at that time.

A. He says, "These boys want to negotiate with you." And asked if it was all right. I said, "Yes, certainly, go ahead and do your negotiating." Then Hugh left.

Q. And who among the employees was on that bargaining committee, that you now recall? [596]

The Witness: George Harlan was with him and there was another man, I don't just remember who it was. [597]

Q. (By Mr. Smith): If you do remember whether or not you had been visited by Mr. Harlan previous to the time that Hugh Osborne came in with him or not?

A. I couldn't say definitely about that, the boys going in and out all the time in the office, he might have come in there.

Q. All right. Now, after that day Mr. Osborne did come in with Harlan and one other man, did you

(Testimony of F. A. Willard.)

reach an agreement between the Ice Company and that bargaining committee?

Mr. Ryan: I object to that, it calls for a conclusion.

Mr. Whitelaw: He can say what happened or what was said.

Trial Examiner Mouritsen: Yes.

Mr. Smith: I will withdraw the question, Mr. Ryan is correct.

Q. (By Mr. Smith): Can you tell us what happened that day that Mr. Harlan and another man came as a bargaining committee?

Mr. Ryan: What was said and what was done.

Trial Examiner Mouritsen: After Mr. Osborne left, tell us what happened. You told us what happened up until [598] the time Mr. Osborne left.

The Witness: The boys started talking about various things they wanted.

Q. (By Mr. Smith): Tell us what they said as close as you can.

A. They talked about many things, and I told them the best thing to do was for them to reduce that all to writing and we could take up one at a time and thresh it out.

Q. Do you remember what subjects they were talking about?

A. They were talking about increase in pay and talking about vacations, talking about sick leaves; several other things.

Q. All right. Now, when you suggested they reduce that all to writing, what was said by them?

(Testimony of F. A. Willard.)

A. Well, they agreed that that was the proper thing to do and they would go ahead and do it.

Q. When next were you visited by anyone purporting to represent the employees association?

A. Well, Harlan came in soon after that and said he had—they had a proposed contract written out and they wanted to have a meeting and go over it.

Q. Was he alone or with someone?

A. He was alone then.

Q. Tell us everything he said and you said, as well as you can now remember. [599]

Trial Examiner Mouritsen: Let's find out again, first, how long after this first meeting this second one took place.

The Witness: Just a few days, less than a week.

Mr. Petersen: Was that the latter part of October or the first of November? I would like the date fixed a little closer, if we can.

Q. (By Mr. Smith): Do you know the date, Mr. Willard?

A. No, I couldn't say the exact date.

Trial Examiner Mouritsen: You can't fix the date of the first one any more than it was in the month of October?

The Witness: No.

Trial Examiner Mouritsen: And this one was not more than a week later?

The Witness: Yes.

Q. (By Mr. Smith): Go ahead and tell us about that second meeting with Harlan as close as you can, what you said and what he said.

(Testimony of F. A. Willard.)

A. He said they had a proposed agreement drawn up and they wanted a date for another meeting to go over it with us. And I told them to—any date that was convenient for them we would go over it.

Q. Did he leave anything with you?

A. No.

Q. That was all that took place. Did you arrive at a date with him? [600]

A. Yes,—no, we didn't arrive at a date. I told them any date that was convenient for them. My recollection is that—I think it was the following day, he said they would like to meet with me that afternoon.

Q. Did you meet with someone that afternoon?

A. Yes.

Q. And who came that time?

A. The whole committee came that time, there were three of them.

Q. Who were they, if you now remember?

A. Well, I think it was Harlan, he told me he was the president, and I think he said that Tom Herring and Lloyd Gettle were the bargaining committee, is my recollection.

Q. Now, do you remember what was said by each of you during that ensuing meeting?

A. Well, they brought in a proposed contract and they had some corrections of their own they had put in it, and we discussed that contract; the different features of it.

Q. By the way, how was that contract written?

(Testimony of F. A. Willard.)

A. Well, it was typewritten on a blank sheet of paper, similar to that (indicating).

Trial Examiner Mouritsen: Letter size or legal size?

The Witness: I think it was legal size.

Q. (By Mr. Smith): Is that original paper that they brought in around here? [601]

A. I think Mr. Whitelaw has it.

Q. While they are reading that, Mr. Willard, did you ever contribute anything to the employees association? A. No, sir.

Mr. Ryan: I object to that and move to strike it as a conclusion.

Trial Examiner Mouritsen: I will overrule the objection and deny the motion.

Mr. Petersen: No objection to the introduction of it.

(The document referred to was marked as Respondent Ice Company's Exhibit 3, for identification.)

Q. (By Mr. Smith): I will show you a document which is marked Respondent Ice Company's Exhibit 3 for identification, and ask you if you have ever seen that document before.

A. Yes, this is the document the bargaining committee brought in.

Trial Examiner Mouritsen: Is that the one they brought in on the first occasion they ever brought any in?

The Witness: Yes, sir.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): What discussion did you have, if any, with the bargaining committee when they presented that document?

A. The first meeting we didn't have a very long discussion, there were several things in it that I objected to.

Q. Do you remember now what they were? [602]

A. I could probably tell by looking through it again.

Mr. Smith: May the witness look at the Exhibit 3?

The Witness: Well, we had a discussion on the truck drivers and machinists and office boy, evidently, and I know we had a discussion on vacations.

Q. (By Mr. Smith): What did the boys contend for on vacations?

A. They asked for two weeks and more if they wanted it. And on the sick leave, discussion on that. They wanted a week's sick leave with pay.

Q. Did you ever agree to that?

A. No, I didn't. We finally agreed that we wouldn't let them have a definite six days' leave with pay, but we would leave it open for discussion between the Association and the company on any individual case that might come up. We didn't agree to any six days' leave. Then there was discussion on holidays, and then there was a discussion about drinking on duty and incompetency, grounds for a dismissal. And then there was dis-

(Testimony of F. A. Willard.)

discussion about the 40-hour week. And there was discussion about making it a closed shop.

Q. Now, do you remember what they said about that? Did you agree to that or object to it?

A. I objected to it.

Q. What did the boys say about that? [603]

A. Well, they insisted on having a closed shop. The argument was that was the only way they could maintain the majority of the employees.

Q. And did you finally agree to the contract with that provision in it?

A. Well, I finally did, yes.

Q. Did you that first meeting?

A. No, sir. No, they realized right away it was getting into a lengthy discussion and they didn't want to assume the responsibility of O. King any change and they asked to have another meeting and have all the boys present.

Q. All the employees that were in the union?

A. No, all the boys in the plant.

Q. I see. And what was done in that regard?

A. I agreed to it, and our subsequent meetings were with the—not always all the boys, but with a good majority of them.

Mr. Petersen: Fix the date for those meetings.

Q. (By Mr. Smith): Let's take your first meeting with all the employees or all those that attended. Do you remember how long that was after they presented this written contract?

A. It was just immediately following, within two days, anyway.

(Testimony of F. A. Willard.)

Q. And did the foreman or supervisor attend?
[604]

A. The what?

Q. Did your foreman or supervisor attend?

A. No.

Q. Or clerical help?

A. Well, Herman was there.

Q. Well, now, can you tell us what took place in that meeting with the employees there?

A. Well, we discussed these various questions that had come up and agreed on them and a final——

Mr. Ryan: I object to the conclusions of the witness and object to anything other than what was actually said by various persons in the meeting.

Mr. Smith: That is right.

Q. (By Mr. Smith): When you say we agreed on it, that, in law, they say that is a conclusion, Mr. Willard. You will have to say what you agreed to and what they agreed to and what they said.

A. We agreed on these questions I have mentioned before.

Q. Tell us what was said, now.

Mr. Ryan: I move to strike his conclusion.

Trial Examiner Mouritsen: I will leave it in. Tell us what was said. It is objectionable if you say we agreed to it, but if you say I said I would agree to it and they said they would agree to it, it is not objectionable.

The Witness: Yes, sir. There was a discussion [605] about the hourly wage, which was agreed to.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): What did you tell them you would do and what did they say they would do?

A. Well, that would be pretty difficult to say now. The contract we made would, I think, be the best evidence of it.

Trial Examiner Mouritsen: We are trying to find out what the discussion was that led up to the contract that was finally made.

The Witness: Well, there was a discussion on the rate of pay, the hourly rate. According to this they asked for 85 cents an hour. Storeroom men 75 cents an hour.

Q. (By Mr. Smith): Did you agree to that? Tell us what you said to that.

A. I couldn't tell you whether that was the rate we agreed on at that time or not.

Mr. Smith: I guess the witness can refer to the written contract, can't he, of 1941?

Mr. Ryan: The contract speaks for itself, if that is all we want to find out. If it is in there he agreed to it, if it isn't he didn't agree to it.

Trial Examiner Mouritsen: Can you tell us of any of the discussions that preceded the making of the first agreement which I think is Board's Exhibit 5?

The Witness: The discussion that we had at this meeting? [606]

Trial Examiner Mouritsen: Yes.

The Witness: Well, for instance, they asked for 85 cents an hour, for instance, and it is pretty difficult to say what you would answer to that.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: You said no, you wouldn't give 85 cents an hour, is that right?

The Witness: I couldn't tell you that even.

Trial Examiner Mouritsen: My recollection is that they didn't get 85 cents an hour.

The Witness: I suspect you are right.

Mr. Smith: Let's let the witness refresh his memory on the 1941 contract.

Mr. Petersen: I would like, Mr. Examiner—off the record, please.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

We will take a short recess.

(Short recess taken.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Smith): Now, Mr. Willard, you have had an opportunity to read the 1941 contract. Does that refresh your memory any as to what the discussion was preceding the 1941 contract? [607]

A. Yes, the principal discussion was on the hourly wage.

Q. Do you remember what the men said and what you said?

A. Well, the men wanted an 85-cents an hour rate, for operating ice pullers, as they call it.

Q. What did you say to them about that?

A. I told them I felt that was too high, it was considerably higher than other ice plants in the

(Testimony of F. A. Willard.)

Valley were paying. We finally agreed on a sliding scale the first year, 66-1/2 cents and the second year 69 cents and the third year 72 cents. That scale was for new men going to work that fall, would be on a 66-1/2 cents rate per hour and the men who had worked two years would be on the 69 and the men who had worked three years would be on the 72 cents. And on the storeroom the men asked for 75 cents per hour.

Q. What did you say?

Trial Examiner Mouritsen: You finally agreed upon the wage scale set out in the contract?

The Witness: Yes. Then another thing we had considerable discussion on was the delivery of white ice. We had had at that time one year's experience on delivering ice on a per ton basis, and it worked out, I thought, very satisfactorily and resulted in delivering—more easy delivery of ice, the men had an incentive to work for something. And we delivered the ice easier and with less trouble. [608]

Q. (By Mr. Smith): That is, you paid them so much a ton for delivering it? A. Yes.

Q. I see.

A. There was some objection to that, but not very much. We finally agreed to it and we have been doing that ever since.

Q. You had never done that before that time?

A. I think we did that one season before, we had had one season's experience

Q. When you refer to white ice, what do you mean?

(Testimony of F. A. Willard.)

A. That is the ice delivered to vegetable packing houses.

Trial Examiner Mouritsen: How is that different than clear ice?

The Witness: The white ice we call vegetable ice and the clear ice we call domestic ice. There wasn't much discussion on the question of vacation. We agreed two weeks vacation with pay. We didn't agree to another week's sick leave. And we didn't agree to another week's layoff for holidays. And the company finally agreed to a closed shop.

Q. (By Mr. Smith): All right. Now, Mr. Willard, after that Exhibit 3 was gone over between you and the men, what was next done toward drafting an original agreement which you signed?

A. Well, all of this I have just discussed probably took, [609] my recollection is it took three meetings, and when we had finally agreed on everything, they asked me if I would have the contract written up somewhere. My recollection is that Herman took it to a public stenographer in town and drew it up, wrote this one (indicating).

Q. Who is the public stenographer?

A. Lena Bridenstein.

Q. Public stenographer in Holtville?

A. Yes.

Q. And is she the one that typed that copy that is signed, the original? A. Yes.

Q. Then to briefly state what advantages did the men secure by that bargaining they had not previously enjoyed?

(Testimony of F. A. Willard.)

Mr. Ryan: I am going to object, that is immaterial.

Trial Examiner Mouritsen: I think I will overrule that, I would like to find out. I think that is one of the elements that the Board has taken into consideration in similar cases.

The Witness: They got an increase in wages, they got another week's vacation with pay. We didn't grant a sick leave but we did agree to assist if they would present a case that was deemed to be worthy of assistance.

Trial Examiner Mouritsen: Was that provision made a part of the contract? [610]

The Witness: No, it is mentioned in there, but——

Mr. Whitelaw: It is in the contract.

Q. (By Mr. Smith): Now, there is a provision in the contract which provides that the employer shall deduct from the employees' pay their dues. Who requested that provision?

A. The employees.

Q. Did Mr. Osborne ask for or receive any benefits from the company?

A. Not from the company, no, sir.

Mr. Ryan: When do you have reference to?

Mr. Smith: At any time.

Mr. Ryan: Are you talking about these negotiations?

Mr. Smith: Yes, regarding these negotiations.

Q. (By Mr. Smith): Now, Mr. Willard, after the spring of the 1941 contract, which is a Board's

(Testimony of F. A. Willard.)

exhibit, did you live up to all these provisions in there that you were supposed to live up to, so far as you know? A. Yes.

Q. And after that contract had been in force a year, was there a second contract for the year commencing in November, 1942? A. Yes, sir.

Q. And tell how that came about that that was signed? Did anyone call on you?

A. Yes, they made a written application for another [611] meeting. That was in my office before I got back.

(A document was marked Respondent Ice Company's Exhibit No. 4, for identification.)

Q. (By Mr. Smith): I show you what I have had marked for identification as Respondent Ice Company's Exhibit 4.

Mr. Smith: At this time I would like to offer in evidence the 1941 contract, which I think is Board's Exhibit 5, unless it has been received.

Mr. Ryan: It is in evidence.

Mr. Smith: I will offer Respondent Ice Company's Exhibit 3 in evidence.

Trial Examiner Mouritsen: Is there any objection?

Mr. Ryan: Wait a minute. I want to ask this witness a question on voir dire, to really find out something about this contract.

Mr. Smith: Let me go ahead then with this.

Q. (By Mr. Smith): Showing you Respondent Ice Company's Exhibit 4, for identification, Mr.

(Testimony of F. A. Willard.)

Willard, I will ask you if you have ever seen that letter before? A. Yes.

Q. When and where did you ever see it?

A. I think that was sent to me at Bend, Oregon.

Q. I think the envelope is attached to it.

A. That was for the return of this (indicating).

Q. Oh. [612]

A. I noted receiving it August 10, 1942.

Q. Where were you on August 10th?

A. Bend, Oregon.

Q. At any rate, you did receive that written request for bargaining rights for another year, did you? A. Yes.

Mr. Smith: I will offer that as an exhibit next in number.

Trial Examiner Mouritsen: Is there any objection to this offer?

Mr. Ryan: No objection.

(Thereupon the document referred to, heretofore marked for identification as Respondent Ice Company's Exhibit No. 4, was received in evidence.)

Mr. Ryan: In connection with the offer of Respondent Ice Company's Exhibit 3, I would like to ask a couple of questions on your offer and get that over with.

Voir Dire Examination

Q. (By Mr. Ryan): Mr. Willard, Respondent Ice Company's Exhibit 3, is composed of five sheets of paper, of which three are typewritten and the other two appear to be written in longhand. At the

(Testimony of F. A. Willard.)

time you received these proposals from the Association, did it consist of three typewritten pages and two handwritten pages?

A. That last sheet might have been mine, the others were [613] attached to it.

Q. I show you the third page.

A. This is the one I had reference to, that came with it.

Q. That came with it?

A. Yes, that came with it.

Q. Those handwritten pages came with it?

A. Yes.

Q. They were attached together when you got them, like that? A. Yes.

Mr. Ryan: I have no objection.

Trial Examiner Mouritsen: Was this the document Mr. Herman Smith took to the public stenographer for typing in final form?

The Witness: I think it was, yes, sir.

Trial Examiner Mouritsen: Was this the document that you used throughout all of these negotiations with the Association?

The Witness: I am sure it was.

Trial Examiner Mouritsen: There were no other written proposals that were furnished you by the Association, is that right?

The Witness: I think that is right.

Trial Examiner Mouritsen: There were no other written proposals that you furnished the employees association?

The Witness: No. [614]

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: I will receive it in evidence as Respondent Ice Company's Exhibit 3.

(Thereupon the document referred to, heretofore marked for identification as Respondent Ice Company's Exhibit No. 3, was received in evidence.)

RESPONDENT ICE COMPANY'S
EXHIBIT No. 3

PROPOSAL
~~AGREEMENT~~

This agreement, made and entered into this..... day of19....., by and between the Employees Association of Holtville Ice & Cold Storage Co., hereinafter called the Association and Holtville Ice & Cold Storage Co. Hereinafter called the Employer.

Witnesseth: That whereas both of the above-named parties desire to enter into an agreement respecting wages, hours, working conditions, and other matters affecting operation of that certain business known as Holtville Ice & Cold Storage Co. and situated in ~~the~~ Holtville, State of California, and

Whereas, the Employer hereby is willing to recognize the Association as the representative of the employees of the second part,

Now, therefore, for and in consideration of the mutual covenants to be kept and performed by each of the parties hereto, it is understood and agreed as follows:

1. The Employer recognized the Association as the sole and exclusive representative of the em-

(Testimony of F. A. Willard.)

employees of the Employer for the purpose of collective bargaining during the life of this agreement.

2. The Association agrees not to engage in sympathetic strikes.

3. The Association agrees that it will use all legal and legitimate means to see that contracts between its members and the Employer are strictly adhered to and faithfully kept.

4. There shall be no strike or other suspensions of work by party signatory hereto during the life of this agreement.

5. It is mutually agreed that any differences that may arise between the parties to this agreement regarding wages and plant operation shall be settled by arbitration in the following manner: Each party shall appoint two representatives who may decide the issue by a three-fourth's vote, which shall be final and binding on the parties, or failing to so agree, shall by a three-fourths vote select a fifth person to act with them. The decision of the majority of the five members of this board of arbitration shall be final and binding on both parties.

6. Six days shall constitute a week's work.
~~Tips and gratuities shall be retained by the employee.~~

7. The wage scale shall be as follows:

7. The wage scale shall be as follows:
Eight hours shall constitute a working day.
and 40 hours a week
Operating Ice pullers 85¢ per hr; Storeroom men
75¢ per hr;

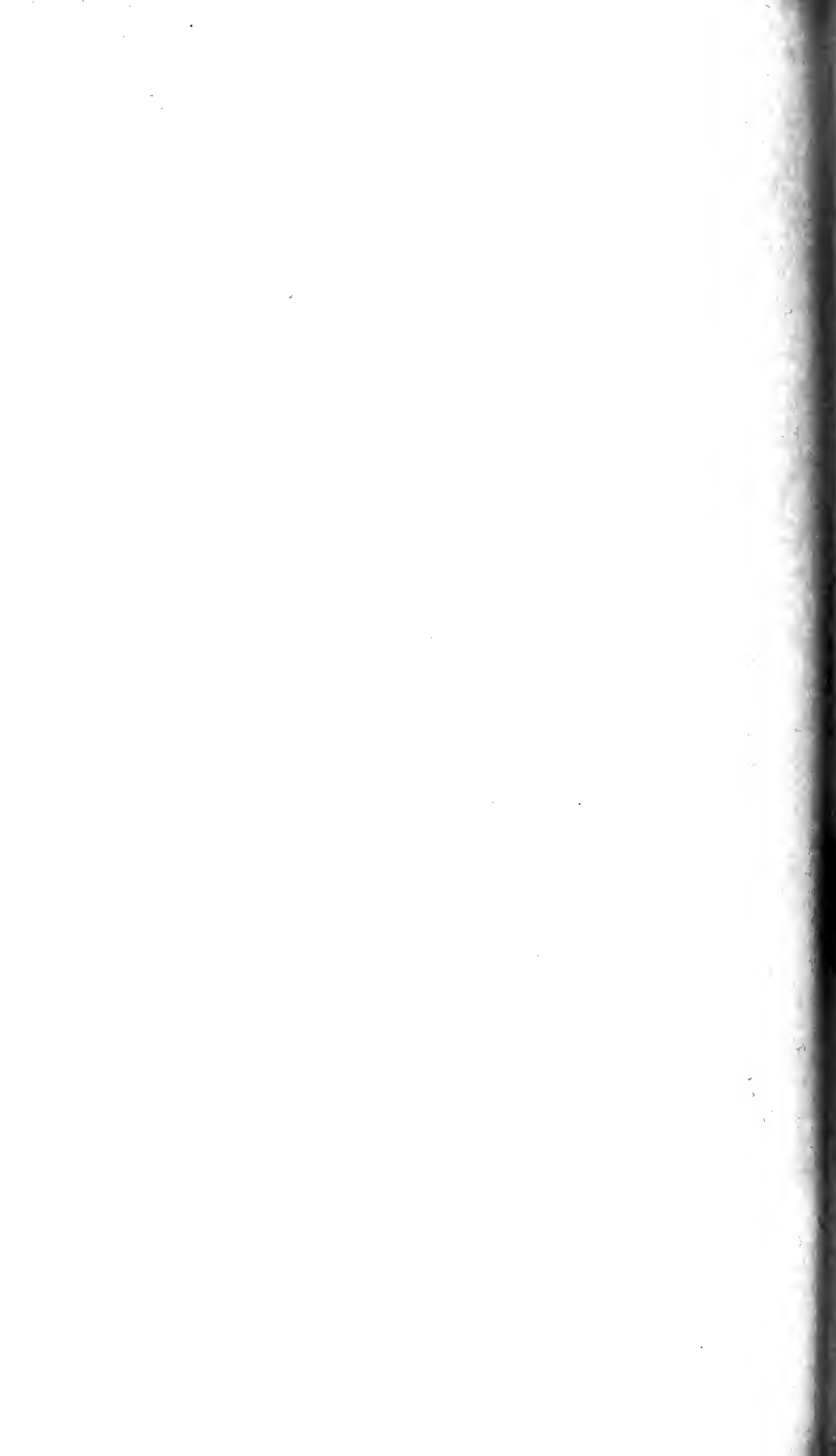
Truck drivers, machinists, Office boys, ~~X~~
Garage men and other help not now
employed, (when on full time wages)
wages shall be agreed upon by members
of this association and their employer.

Anyone working for this comp any, shall
be entitled to 2 weeks vacation on full
pay, and more without pay if agreeable to employer.
Any employee shall be granted six(6)
days sick leave on pay, by presenting
doctors written sick leave certificate

Employees working the following Holiday
New Years, Fourth of July, Labor Day, Armistice
Day, Thanksgiving and Christmas shall
have one extra day on pay added to the
vacation period for each day worked

No existing privileges which have hereto
been been extended to the employees
shall be terminated by the signing
of this agreement.

Employer shall have right to fire without
reasons for dishonesty or drunkenness.
Employee must stand on shift until
relief shows up and may not ask for over
time (time & one half) for the first shift so run.



Any person becoming an employer
of employees shall within 15 days become
and remain a member in good standing
of the association -

(Testimony of F. A. Willard.)

Relief help shall ~~receive~~ be on _____ scale of _____
the person relieved. There shall be no reductions
other than for State and Federal taxes.

8. The Association covenants that its membership has ratified this agreement and same has been approved by the officers of the Association.

9. This Agreement shall remain in full force and effect up to and including the _____ day of _____, 19____.

10. Overtime at the rate of time and one-half of regular pay shall be paid on all hours per day worked in excess of those set forth in paragraph ~~#3~~^{#7} hereof.

11. No employee shall have his or her wages reduced or hours of labor increased by the execution of this agreement.

12. No member of the Association shall be discharged for upholding Association principles, or for doing committee work in the interest of the Association after regular working hours.

In witness whereof, the parties hereto have set their hands.

Employer for the
By _____

For the Association

By _____

Its President

By _____

Its Vice-President

By ~~M. K. STOUT~~

Its Secretary-Treasurer

(Testimony of F. A. Willard.)

Direct Examination

Q. (By Mr. Smith): Mr. Willard, following the request to bargain in the fall of 1942, did you meet with a committee of the employees association in the fall of '42? A. Yes, sir.

Q. Do you know approximately when?

A. I think it was in the latter part of September.

Q. And do you remember who met with you, who represented the employees association?

A. Well, I know there was George Harlan and Gettle and Pete Drinkard. Could I look at this list?

Trial Examiner Mouritsen: Is that all you can recall without assistance?

The Witness: No, if you give me time I can give them to you. Let's see, there was Stout and Gettle. How many is that we have?

A. (By Mr. Smith): Well, if you can't remember the names of anyone else, can you tell us about what was the substance of the meeting, what they said and what you said?

A. At the first meeting they asked for an increase in [615] wages.

Q. This is in the fall of 1942? A. Yes, sir.

Q. All right.

A. And I asked them to state what they wanted in the way of increase in wages. And they wouldn't say. And after we had tried to get some discussion from them, I made them a proposition, that I would give them a 10 per cent in wages and if the company earned enough to pay a dividend, then we would give them a bonus of 10 per cent.

Q. What did they say to that?

(Testimony of F. A. Willard.)

A. They didn't say anything, they adjourned the meeting and were going to talk it over among themselves.

Q. Then did you meet again?

A. Yes, the next meeting George Harlan came in and he had a written memorandum, and said that the memorandum asked for a straight 20 per cent increase. And he asked for another meeting, he said that is what they wanted. I told them I didn't think it would be necessary to have a meeting because he could tell them I wouldn't give them a 20 per cent increase.

Q. Then what happened?

A. Well, he said he would go back and report to the boys, and said he would let me know about it. And there was some delay there because he thought I was to call another [616] meeting and I was waiting for him to ask for another meeting, and that delayed over into October. And finally he came and asked me if I had decided on a meeting date. I told him, no, I was waiting for him. And then he asked for a date and I told him any time that was convenient to him to have a meeting. And I think it was the following day we had another meeting.

Q. All right. Now, who attended that meeting?

A. It was practically all the employees in the plant then.

Q. Did that include the superintendent?

A. No, Smith was there and Pool was not there.

Q. And tell us what was said in that meeting by the men and by you.

(Testimony of F. A. Willard.)

A. Well, in that last meeting there wasn't much discussion, they asked for the wages that we have in the last contract, and I agreed to it.

Q. That is in the 1942 contract? A. Yes.

Trial Examiner Mouritsen: Board's Exhibit 8?

Mr. Smith: Board's Exhibit 8.

The Witness: Yes.

Q. (By Mr. Smith): And then the 1941 contract was virtually copied with those changes?

A. Yes.

Q. As to wages? [617]

A. Yes, that is right.

Q. Was that the only change in the 1942 contract?

A. Yes, it was. That was the only change.

Q. Now, Mr. Willard, Mr. Wells testified in this hearing that he was a business manager of the Chauffeurs, Teamsters, Helpers, Local 898 of the A. F. of L., and he called at the office of the Holtville Ice Company in the fall of 1941, I believe he said in September. And that he had two discussions with you. Did you ever meet with Wells before?

Mr. Petersen: Mr. Examiner, now I don't like to object but I am going to on the basis that the testimony——

Trial Examiner Mouritsen: It is not correctly stating the testimony that Mr. Wells——

Mr. Petersen: It is not correctly stating the testimony of Mr. Wells, and testifying.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: As I recollect he testified he had met with him once, on cross examination.

Mr. Whitelaw: On cross examination he said once, but on direct he said twice.

Trial Examiner Mouritsen: I think the point was finally cleared up that he left the contract with Mr. Smith.

Q. (By Mr. Smith): Did you have a conversation with Mr. Wells?

A. My recollection is that this man that was here didn't talk at all. The man that was with him did talk. [618]

Q. Do you know the name of the man that was with him? A. No, I do not.

Trial Examiner Mouritsen: Even after hearing it here, don't you know?

The Witness: I think it was Floyd.

Q. (By Mr. Smith): All right. Do you remember about when it was that those two men came over to talk with you?

A. I think it was in September, '41.

Q. Now, can you remember what the spokesman said of the two, and what you said? You can answer that yes or no.

A. Well, they came in and introduced themselves and said they were representing the union. They said they had left a contract there previously and asked me if I had read it, and I told him, no, I hadn't, and they asked me if I would read it, and I said yes, I would. And they said they would like

(Testimony of F. A. Willard.)

to meet with me again, and I said that would be all right with me.

Q. Was there anything more to the conversation?

A. I told them that I couldn't act on it without taking it up with my Board of Directors. After I read it I would take it up and I would be ready to meet with them.

Q. Did either of those men or anyone representing the union ever come back to talk with you?

A. Not that I know of.

Q. Did anyone ever communicate with you from the union, [619] until the letter of January 12, 1941?

A. Yes, I think someone was back, my recollection is Herman Smith told me one of the men was back once after that.

Q. What else did Herman Smith tell you about that?

A. He told me that he had made an appointment, I am not sure whether it was the next day, to meet with them at 3:00 o'clock.

Q. Did you keep the appointment?

A. I did, yes.

Q. Did they keep it? A. No, sir.

Q. Did anyone keep it on behalf of the union?

A. No, I never heard from them from that time until we received the letter.

Q. Of January 12, 1942?

A. Yes, that is right.

(Testimony of F. A. Willard.)

Q. Now, Mr. Willard, when Mr. Wells was on the witness stand he testified that he told you that the Chauffeurs, Teamsters and Helpers, Local 898, A. F. of L. had a majority of your employees. Did he tell you that?

A. No, he never told me that.

Q. Did the other man with him say that in substance? A. No, sir. [620]

Q. (By Mr. Smith): Mr. Willard, during the session yesterday I showed you Ice Company's Exhibit 3, for identification, which you stated was the first draft of the proposed contract presented to you by the Employees Association. Then Board's Exhibit 5 was shown you as the copy of the contract that was finally signed between the Ice Company and the Employees Association. Now, I want to ask you if there were any intermediate written proposals submitted by the Employees Association after that Exhibit 3 was first exhibited to you and before the finished contract was signed.

Mr. Petersen: To which we object, it has already been asked and answered by the witness, and a direct question by the Examiner yesterday. [624]

Trial Examiner Mouritsen: I will overrule the objection, and permit him to answer.

The Witness: My recollection is now there was another one. The boys took this one back to White-law and he drew another one.

Q. (By Mr. Smith): Took which one, do you refer to? A. Exhibit 3.

(Testimony of F. A. Willard.)

Q. Then took that away?

A. That one back to Mr. Whitelaw.

Q. I see. And then did they present to you the one that was typed by Mr. Whitelaw?

A. Yes.

Q. Were there any changes made before that final—Exhibit 5 was actually drawn up and signed?

A. Yes, there was one single change made, in the one that came back from Mr. Whitelaw.

Q. And did that necessitate retyping it again?

A. Yes, it did. There was an error in the rate and that was corrected.

Q. I see. So when you testified yesterday that there was no written proposal between Exhibit 3 and Exhibit 5 you were in error, were you?

A. That is correct, yes, sir.

Q. Now, Mr. Willard, did the State of California file a suit against the Holtville Ice and Cold Storage Company to [625] pay California Retail Sales Tax on the ice manufactured and sold?

A. Yes, sir.

Q. And what was the outcome of that suit?

Trial Examiner Mouritsen: Wait a minute, now.

Mr. Smith: I might explain the materiality.

Trial Examiner Mouritsen: Well, it is merely on the question of what is the best evidence, that would be the question.

Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Read the question.

(Testimony of F. A. Willard.)

(The question was read.)

The Witness: Decided we had to pay the tax.

Q. (By Mr. Smith): And the company has paid the California retail sales tax on all ice sold since then, has it? A. Yes, sir. [626]

Q. (By Mr. Smith): Mr. Willard, how many other ice companies are there within a radius of 12 miles of Holtville?

A. Nine. There are two in Holtville, three in El Centro, two in Brawley and two in Calexico.

Q. Brawley is more than 12 miles, isn't it?

A. Yes.

Q. How many are there within a radius of 12 miles by the highway?

A. Two in Holtville and the three in El Centro.

Q. Are there any in Calexico?

A. Yes, two in Calexico.

Q. Calexico is more than 12 miles?

A. Yes, it is.

Mr. Ryan: I object to the materiality of this evidence, it has been held time and again by the courts and the National Labor Board cases it is of no concern whether or not a customer could obtain that goods elsewhere, the court doesn't have to go beyond the immediate parties to [627] find out whether or not, in order to avoid a stoppage of interstate commerce operations, the recipient of the services could have gotten them elsewhere.

Trial Examiner Mouritsen: Was that the purpose of it?

(Testimony of F. A. Willard.)

Mr. Smith: In answer to that there are also decisions of the Board if a commodity affects interstate commerce that question should be decided. Now, we propose to show by this testimony there are other ice companies who could have supplied all these shippers without interrupting the flow of vegetable shippers.

Trial Examiner Mouritsen: You would term it within the cases to which Mr. Ryan refers. It has been held that that showing is immaterial. I mean if you could. I recall most recently one of the cases affecting the Gas Company, I think, in the Los Angeles area to the effect that they all had a standby plant, or something like that. It wouldn't make any difference if they didn't receive natural gas, I don't think it would be material. You can put it in your record by means of an offer of proof.

Mr. Petersen: Further, Mr. Examiner, unless Mr. Smith is prepared to show these other ice plants had capacity enough to take care of the increased business, I don't think he should put it in. If we are going to deal in what each of the ice plants has in capacity, I think we will get somewhere. [628]

Trial Examiner Mouritsen: Mr. Smith will probably make that part of his offer of proof.

Mr. Smith: I will offer to prove by this witness that there are four other ice companies manufacturing ice within a radius of 12 miles of Holtville, Imperial County, California, and that if the

(Testimony of F. A. Willard.)

Holtville Ice and Cold Storage Company were to be shut down that that fact would not interrupt the flow of vegetable shipments out of Imperial Valley, because the other four had sufficient capacity to furnish the sheds in Holtville.

Mr. Whitelaw: And immediately, without interruption.

Trial Examiner Mouritsen: Do you want to add that?

Mr. Smith: Yes, immediately, without interruption.

Trial Examiner Mouritsen: I will reject the offer.

Q. (By Mr. Smith): Mr. Willard, how long previous to the time you changed over from Diesel power to electric power had you planned to change to electric power?

A. We had been working on it about a year.

Q. Does the Holtville Ice and Cold Storage Company deliver any ice outside of Imperial County, California?

A. No, sir, not any.

Q. Manufactured in Holtville, sold in Holtville, is that correct?

A. Yes, that is correct.

Q. Witness Harlan testified, he said he was related to [629] Pete Pool's wife. Did you ever know that to be a fact before this trial——

A. No, sir.

Mr. Smith: I think that is all.

Mr. Yeager: I would like to ask some questions.

(Testimony of F. A. Willard.)

Cross Examination

By Mr. Yeager:

Q. Mr. Willard, I think you testified you came back from your vacation about the 20th of September, 1941? A. Yes, sir.

Q. Did you, after you came back, learn about the union activity at your plant?

A. Yes, a few days after that.

Q. And how did you hear that?

A. I walked out through the plant and stopped and talked to the superintendent, Mr. Pool, and in the conversation I asked him how things were going and he said it looked like the plant was going union.

Q. And then it was subsequent to that conversation that you telephoned Mr. Osborne?

A. Yes, sir.

Q. What was your reason for telephoning him?

A. I wanted to find out all I could about it, find out what was doing. Mr. Osborne told me he would be over and see me in a few days. [630]

Q. Did he tell you whether he was aware of what was going on?

Trial Examiner Mouritsen: Wait a minute. Before you leave that let's find out first was that all that he said.

Q. (By Mr. Yeager): Was that all he said?

A. No; I asked him what I could do about it. He told me he knew all about it, and I asked him what I should do about it, and he said, "Don't do anything. I will be over and see you in a few days."

(Testimony of F. A. Willard.)

Q. Did he come over to see you? A. Yes.

Q. When was that, approximately?

A. That was a few days following the telephone conversation.

Q. Still in September?

A. Yes, it must have been. [631]

Q. Now, at this conversation you had with Mr. Osborne when he came to your office, did you directly or by inference request him to do anything about forming an employees union in your plant?

A. No, sir.

Q. (By Mr. Yeager): Was there any discussion at that time concerning who among your men had made application for the A. F. of L.? [634]

The Witness: No, sir. [635]

Q. What was the substance of it? What did you say and what did Mr. Osborne say?

A. I was particularly interested in knowing what I should do, if anything, and Mr. Osborne said that there wasn't anything I could do, and shouldn't do anything. Let nature take its course. He told me that if anything developed that looked serious, he would keep in touch with it and let me know about it.

Q. Did he amplify what he meant by looking serious?

A. Oh, if there should be any disturbance of any kind. [636]

The Witness: I understood if it looked as though there might be some rough work or something about

(Testimony of F. A. Willard.)

to happen or take place, he would let me know about it. [637]

Cross Examination

By Mr. Ryan:

Q. Mr. Willard, you have been operating the Holtville Ice and Cold Storage plant since about 1926, is that right? A. Yes, sir.

Q. And your season begins usually in the latter part of October or the first of November, isn't that right, when you begin filling up your storage tanks with ice? [638]

A. Yes, that is correct.

Q. And about how long is your plant engaged in that particular job of getting a supply on hand and filling up your storage tanks before you actually have to start supplying the vegetable packing customers?

A. Well, we usually try to start in sufficient time to fill our storage by January 1st. Now, the sales start usually a little before January 1st.

Q. To the packing companies? A. Yes.

Q. The packing companies start up the latter part of December?

A. Yes, of course, when they start depends on the crops.

Q. As a rule, that is usually around the latter part of December or the first part of January?

A. Yes.

Q. Then for some time after the vegetable packing customers started to operate, for some time thereafter this supply of ice that you had been stor-

(Testimony of F. A. Willard.)

ing up immediately prior to their beginning holds over, isn't that right, and you are able to keep supplying them partly from your storage tanks and partly from what you are freezing right along?

A. That is correct, we run the plant full capacity all the time, and if the demand exceeds the capacity of the plant we draw that from storage. [639]

Q. Yes. Then, as the vegetable packers get into the height of their season and they begin to draw even more and more, isn't that right, as the season goes along?

A. Well, the peak is usually in February.

Q. In February. Now, up until about February then you can operate with about the same crew of men that you started the plant, isn't that right, and then you have to start putting on extra ones to take care of the extra demand of the packers?

A. Yes, usually put on extra help soon after the season starts. We have to put on extra help on the platform immediately when it starts.

Q. When the vegetable packers start up?

A. Yes.

Q. And how long is that peak season underway that you have to keep some extra help to keep operating, that is, extra help over and above your normal crew?

A. Approximately two weeks.

Q. Two weeks. Then what do you do, do you lay off the extra help again, is that right?

A. Yes.

Q. Sometimes does it run over, they work a little more than two weeks?

(Testimony of F. A. Willard.)

A. Yes, sometimes we have two peaks.

Q. When does the second peak come, if it does come, as a [640] rule, approximately?

A. There is no rule, it takes a combination of the crops and the market to make a second peak.

Q. Now, when you had the Diesel motors operating your plant you usually started with a crew of about four men in the engine room, isn't that right, four men in the engine room? A. Yes.

Q. That is with the Diesel motors?

A. Yes.

Q. Two in the engine maintenance room?

A. Yes.

Q. And five in the can pullers or ice pullers department? A. Yes.

Q. You also call that the tank?

A. Three on the can pulling.

Q. Three? A. Yes.

Q. And three in the storeroom?

A. Yes, there is an extra man comes in there, a relief man.

Q. In the storeroom?

A. Well, he relieves between the storeroom and the tank.

Q. I see. And in the platform and delivery you have about four men, is that right, until you start putting on extra help? That was under the Diesel engines? [641]

A. On the platform we start up with sometimes one driver and one man on the platform.

(Testimony of F. A. Willard.)

Q. Yes.

A. And that increases as the demand increases.

Q. As soon as the vegetable companies start operating you put on more drivers?

A. Yes, that is right.

Q. In 1940, the last year that you operated, at the beginning of 1940-'41 season, the last year you operated with Diesel motors——

Trial Examiner Mouritsen: I don't think this is going to be clear. Why don't you reframe it and get—I think you mean last year they started beginning the vegetable season when they were still using Diesel power.

Mr. Ryan: Yes, the last season.

Q. (By Mr. Ryan): The last season that you started, that would begin around the 1st of November, 1940, would it not?

A. I think so, yes.

Q. And run on through then up to shortly before you started changing over to electric power in 1941?

A. Yes, that is true.

Mr. Ryan: Miss Reporter, will you mark this Board's exhibit next in order.

(The document referred to was marked as Board's Exhibit No. 10, for identification.)

[642]

Mr. Ryan: I show the document marked Board's Exhibit 10 to counsel.

Q. (By Mr. Ryan): Mr. Willard, I show you the document I have had marked as Board's Exhibit 10, which purports to be a payroll of employees

(Testimony of F. A. Willard.)

with which you began your operations in the fall of 1940, at the start of that season which ran up into 1941. That is the crew, is it not, you started your operations with that fall?

A. Well, that says the fall of 1940. The change-over was 1941.

Q. Yes. I am still talking about the Diesel motors. That is when you had the Diesel motors?

A. Yes, I didn't have anything to do with making this up, that evidently is what it is.

Trial Examiner Mouritsen: For the purpose of the record let's have this last season when they operated with Diesel engines the 1940-1941 season.

Mr. Ryan: All right.

Q. (By Mr. Ryan): Beginning in the fall of 1940 and running into 1941, up into 1941.

A. Yes.

Q. So the men listed on Board's Exhibit 10 are the regular employees, were the normal, regular employees with which you operated that year under the Diesel power, is that right?

A. Yes. [643]

Q. And then, of course, during that season, later on when the business got heavy and the packers, vegetable packers started to operate at their peak season it was necessary for you to put on a few extra people in addition to this crew, isn't that right?

A. Yes.

Q. And for a short period of time?

A. Yes.

(Testimony of F. A. Willard.)

Q. However, the men that you started that season with in the engine room, M. K. Stout, H. G. Miller, E. S. Jones and H. T. Pool, for example, had been with you for several seasons?

A. Yes.

Q. Your normal, regular crew, were considered as your regular crew? A. Yes.

Q. Then in your engine room M. Wooldridge and L. C. Hart, had, of course, been with you for several seasons? A. Yes.

Q. And part of your regular, normal crew?

A. Yes.

Q. In your can pulling department here G. Harlan, S. Hogue, H. Fruhn, A. Standifer and Perry Blankenship were also part of your regular crew? A. Yes. [644]

Trial Examiner Mouritsen: That is, they had worked for you a number of seasons before.

The Witness: Standifer, I think, was maybe on one season before that. The others were all old men.

Q. (By Mr. Ryan): In order to keep the record straight, Mr. Willard, instead of Standifer it was Blankenship you had reference to?

A. Blankenship, that is right.

Q. He had begun, I think, the record will show, it was May of that same year, 1940?

A. Yes, it was.

Q. In other words, he had been in your employ since May of the spring before? A. Yes.

Q. And then in your storeroom, Mr. Willard,

(Testimony of F. A. Willard.)

you had three men, L. Gettle, R. H. Ireland and Bailey Pool. That is Bailey Pool, I believe.

A. Yes.

Q. And they were your regulars in that department, is that right?

A. I wouldn't say Bailey Pool was a regular, he had worked off and on for the company.

Q. The other two were regulars?

A. Yes, they had been on several years.

Q. Now, E. Broderick, Tom Herring, G. P. Drinkard, and [645] H. C. Fredenburg were the regular ones you had had for several years up to that time on the platform and delivery?

A. What was the first name?

Q. E. Broderick.

A. He is not an old man, the other three were.

Q. The other three were? A. Yes.

Q. Herring, Drinkard and Fredenburg were regular employees? A. Yes.

Q. And M. Ballard had been working for you quite a long time as garage mechanic?

A. Yes.

Q. Now, it had been the practice of the company, had it not, Mr. Willard, to attempt to give these men, this regular crew, work, as much as possible over and beyond your ice operating season? A. That is true, yes, sir.

Q. And by saving maintenance work you were able to give them a couple of extra months, sometimes, and keep them over a month or two after the ice business had actually ceased, isn't that right?

(Testimony of F. A. Willard.)

A. Yes, sometimes carry some of them all through the summer.

Q. But the regular crew, to hold them together, you usually tried to give them some work after the close of the season? [646]

A. That is true.

Q. These extra men you had to put on for a couple of weeks or so during the season, you didn't have occasion or work enough to keep them on, and as soon as the extra peak work was done, you would lay them off, isn't that true?

A. That is true.

Q. If they worked for you again the next season that was more or less an accident, if they happened to be there you would put them on, and if they weren't there you didn't feel obligated to put them on? A. Yes. [647]

Q. (By Mr. Ryan): Now, at the end of the ice season in—at the end of the season which began in the fall of 1940 and ran up into the spring of 1941, at the end of that season M. K. Stout was kept on doing maintenance work, was he not? A. Yes.

Q. And H. G. Miller worked for a time, did he not? A. Yes, he did.

Q. E. S. Jones, did he work any?

A. He quit there somewhere along that time, I don't know just when.

Q. He quit some time in the summer or early spring, is that right?

(Testimony of F. A. Willard.)

A. I think that is correct.

Q. H. T. Pool, he did some maintenance work?

A. Yes. [648]

Q. And M. Wooldridge, can you tell us what about him?

A. Well, he quit early in the summer, just when, I wouldn't say, he got a job up on the Coast and left.

Q. L. C. Hart continued to work on the maintenance work at the end of the season?

A. Yes.

Q. G. Harlan continued to work on the maintenance?

A. No, Harlan didn't work in the summer.

Q. He didn't? A. No.

Q. S. Hogue?

Mr. Whitelaw: Mr. Ryan, you say maintenance work, do you mean the change-over work, or what do you mean?

Mr. Ryan: I mean whatever they had to do around the plant after the ice season was stopped.

Mr. Whitelaw: The maintenance theretofore had been on the Diesels. It is rather confusing in the record. It was in the season of 1941 the change-over, as I understand the situation it was a change-over process and not maintenance.

Mr. Ryan: Maybe I am not properly designating it as maintenance. I think we understand what it is.

Mr. Whitelaw: The record won't show, it was extra work.

(Testimony of F. A. Willard.)

Mr. Ryan: That is what I have been referring to, [649] painting and little odd jobs.

The Witness: That is what I understood it to be; that is correct.

Q. (By Mr. Ryan): Had S. Hogue worked any beyond the vegetable ice season, into the repair work that summer of 1941?

A. I don't recall,—no, he didn't work all through the summer. I don't recall just when he quit.

Q. Did he quit? A. Yes.

Q. H. Fruhn and A. Standifer and P. Blankenship, all three of those men worked on some of the repair work and odd jobs after the vegetable ice season was over and the clear ice season?

A. I can't say about that. I know they worked for the contractor and the storage.

Q. L. Gettle and R. H. Ireland, did they do any work that summer, speaking now of the summer of 1941?

Mr. Smith: I am going to object to the question. Mr. Willard wasn't here, Herman Smith is here with his book showing who did work, the payroll would be the best evidence.

Trial Examiner Mouritsen: That has been my impression. As I recall, I mentioned that fact yesterday about something that you went into.

Mr. Smith: That is right. [650]

Trial Examiner Mouritsen: And I think I was overruled and was informed this man had the knowledge. Although I think there is some merit

(Testimony of F. A. Willard.)

to what you say, however, I will permit Mr. Ryan to go into it.

Mr. Smith: If he knows.

Q. (By Mr. Ryan): Do you know?

A. I couldn't say whether they worked or not.

Q. E. Broderick, do you know whether or not he worked? A. No, I don't.

Q. Do you know he didn't work or you don't know whether he worked?

A. I don't know whether he worked.

Q. Tom Herring and G. P. Drinkard, do you know whether they worked?

A. They both worked.

Q. H. C. Fredenburg worked also, did he not?

A. I think he worked for the contractor.

Q. Did M. Ballard work?

A. Oh, yes. [651]

Q. (By Mr. Ryan): How many employees did you contemplate it would take you to operate normally under the electric power, without taking into consideration those peak periods when you would need extra help?

A. Just the normal help. When we were just operating the plant and the storeroom, it would take three men in the storeroom and three men on the tanks and a relief man.

Q. Well, you haven't made allowance for any delivery men [654] as yet. When I consider normal operations, I am considering you are selling this ice and delivering it to the vegetable companies.

(Testimony of F. A. Willard.)

A. You can't say you have a normal operation when your delivering is up one day and down the next.

Q. You have a certain crew you are operating with at that time, is that right?

A. In the plant, yes, not in the storeroom.

Q. Well, you had a certain group of drivers over there that you had kept regularly, isn't that right?

A. Yes.

Q. Fredenburg?

A. Yes, that is true.

Q. Tom Herring and G. P. Drinkard?

A. Those boys usually work in the storeroom until we are ready to start the trucks operating.

Q. Well, when you had the trucks operating, as a rule, under the Diesel motor power, you had about 22 men working, isn't that right?

A. I couldn't say that.

Trial Examiner Mouritsen: Let me ask you: As a general rule by the 15th of January in each year you usually had your—had put on all of the regular drivers or your customary crew of drivers?

A. No, that is not so. [655]

Trial Examiner Mouritsen: The 15th of January in each year, that is not the case?

The Witness: No, we put the drivers on as the demand increases.

Trial Examiner Mouritsen: Well, then, did you usually put on additional drivers after the 15th of January in each year?

(Testimony of F. A. Willard.)

The Witness: Yes, I would say beginning the 15th of January there is a gradual increase of drivers.

Trial Examiner Mouritsen: Now, that gradual increase does that ever exceed one or two additional drivers after the 15th of January?

The Witness: Yes, it would. Maybe I could explain that and make it a little clearer. The only thing that—around the plant that operates continually at the same rate, you might say, is the manufacture of ice.

Trial Examiner Mouritsen: That is about after when, the 1st of November?

The Witness: That is from the time we start until we shut the plant down.

Trial Examiner Mouritsen: Well then, the storeroom might get more drivers, you might get more. And where else?

The Witness: We operate continuously from the time we start until about around Christmas time the ice is going into storage, that is all it is doing. Now, most [656] of the shippers try to get out a car before Christmas but any shipments they make are very small and probably one driver will handle everything up to sometimes early in January. And early in January shipments begin to pick up and more drivers put on and more men put in the storeroom bringing ice out. Does that clear it up?

Trial Examiner Mouritsen: Yes.

(Testimony of F. A. Willard.)

Mr. Ryan: I don't believe I have offered Board's Exhibit 10 in evidence. I do at this time.

Mr. Smith: I believe we better have Mr. Smith verify what it is. There is one thing——

Mr. Ryan: Mr. Willard says he didn't make it?

Trial Examiner Mouritsen: Yes.

The Witness: There is no date of the payroll. If it is a payroll, I should say it ought to be dated.

Trial Examiner Mouritsen: It says "Employees that began the operations of the plant in the fall of 1940."

The Witness: You called it a payroll.

Trial Examiner Mouritsen: Let's have Mr. Smith clear that up.

Q. (By Mr. Ryan): Now, after you had installed your electric equipment and were about to begin your—begin to operate under electric power, in the fall of 1941, you did not select H. C. Fredenburg to return to continue [657] in the employ of the company? A. No.

Q. He had worked for four years as a driver, isn't that right, delivery man for the company up to that time? A. I think so, yes.

Q. He was in the platform and delivery department. Then after he was let go, you had working in the platform delivery department S. Harlan, W. Faulkner and Charles Hefner. Is that right?

Mr. Whitelaw: Might the witness be afforded the same opportunity of the record that Mr. Ryan

(Testimony of F. A. Willard.)

has in front of him? I would say it is confusing to the witness.

Mr. Ryan: Company's Exhibit 1-A.

Q. (By Mr. Ryan): I show you Respondent Ice Company's Exhibit 1-B.

Mr. Whitelaw: What is that?

Mr. Ryan: Payroll for period ending January 15, 1942.

Mr. Smith: Is that one I gave you this morning?

Mr. Petersen: No.

Mr. Smith: That is 1-A.

Mr. Whitelaw: 1-B. What is that marked, is that 1-B or 1-A?

Mr. Ryan: 1-B.

May I have the last question?

(The question was read.) [658]

Q. (By Mr. Ryan): And G. P. Drinkard also?

A. Yes, that is correct.

Q. Neither S. Harlan nor W. Faulkner nor Charles Hefner had had as much seniority as Fredenburg, were with the company as long as Fredenburg had been, isn't that right?

A. That is correct.

Q. Now, with respect to Herman Fruhn, he had been employed by the company since April, 1929, and worked all of his time as an ice puller.

Trial Examiner Mouritsen: Is that correct?

Q. (By Mr. Ryan): Is that right?

(Testimony of F. A. Willard.)

A. That is correct, yes, sir.

Q. And was there——

Mr. Whitelaw: Just a minute. Mr. Examiner, might I inquire through Mr. Ryan why this is all gone into? It was testified by each one of the witnesses, Mr. Fruhn and all the rest of them. Why go over this same thing and clutter up the record with further questions? It is self-evident and in the record.

Trial Examiner Mouritsen: I presume it is preliminary, directing the witness' attention to it. It is permissible. I will permit it. I will ask counsel to restrict it as much as possible, it is covering the same ground.

Q. (By Mr. Ryan): Now, Mr. Fruhn was not put back—after his employment was terminated by the company,—M. K. Stout, G. Harlan, S. Hogue and L. Gettle worked as ice pullers, isn't that right? A. That is correct, yes.

Q. It is a fact, isn't it, Mr. Fruhn had more seniority with the company than any of those four men? A. Yes. [660]

Q. (By Mr. Ryan): L. Gettle, who was put in as an ice puller after Fruhn's termination, had not even worked in that department before, had he, hadn't he been working in the storeroom the previous year?

A. No, I think he had been working in the tank before.

Q. The payroll will show that, anyway?

(Testimony of F. A. Willard.)

A. Yes.

Mr. Whitelaw: We ask to have the record—testimony of Mr. Ryan stricken from the record unless he wants to be sworn. The payroll doesn't show that, anyway.

Mr. Ryan: I said the payroll would show that.

Trial Examiner Mouritsen: Gentlemen, gentlemen, let's get along. That doesn't help us any. That isn't testimony.

Q. (By Mr. Ryan): With respect to Herman Pool, at the time you were making your selections as to who was to work beginning the season of 1941 through 1942, you then had two engine room men to consider and that was M. K. Stout and Herman T. Pool, isn't that right? The other two men had left the employ of the company previously, E. S. Jones and——

Mr. Whitelaw: Are you referring to Exhibit 10?

Trial Examiner Mouritsen: Let him complete his question.

Q. (By Mr. Ryan): ——and H. G. Miller?

A. I don't understand that question.

Mr. Smith: Pardon me, the witness does not have that Exhibit 10 before him. Do you mind if I give him my copy [661] of Board's Exhibit 10?

Mr. Ryan: Here's the one that is marked 10 for identification.

The Witness: I don't understand the question.

(The question was read.)

(Testimony of F. A. Willard.)

The Witness: Yes, that is correct.

Q. (By Mr. Ryan): And you took M. K. Stout and put him in the tank room? A. Yes.

Q. As an ice puller?

A. We offered him a job, and he took it.

Q. Now, Herman T. Pool, had much more seniority with the company—Herman T. Pool had worked as an ice puller in previous years for the company, had he not, prior to becoming an engineer? A. Yes.

Q. He had more seniority with the company than G. Harlan, S. Hogue, and L. Gettle, did he not?

Mr. Smith: Objected to as immaterial.

Q. (By Mr. Ryan): Who worked in the ice room after his employment terminated?

Trial Examiner Mouritsen: Overrule the objection. Answer the question.

The Witness: I couldn't say as to that.

Q. (By Mr. Ryan): He also had more seniority with the [662] company than R. H. Ireland, W. T. Morgan, A. O'Neal, Oran Stephens and Dorman Stewart?

Mr. Smith: May my objection be continued to all this line of questioning?

Trial Examiner Mouritsen: Yes, you may continue it. It is overruled.

Q. (By Mr. Ryan): He had worked there previously longer than those?

A. I think probably that is correct. [663]

(Testimony of F. A. Willard.)

Q. (By Mr. Ryan): I believe you stated that you had heard about some union activity at the plant when you came back from your vacation trip?

A. Yes, sir. [665]

Q. And you got that from Mr. Pool, Pete Pool?

A. Yes, sir, Pete Pool.

Q. What did Pete Pool say to you in that regard?

A. He said, "I guess the plant has gone union."

Q. Was anything else said between you and Mr. Pool on that occasion; did you say anything to him?

A. Not in that regard, no.

Q. What did you next do, after hearing that, did you call up Mr. Osborne?

A. Yes.

Q. You called him up at the office of the Associated Farmers here in the court house, El Centro?

A. Yes.

Q. What did you say to him?

A. I told him I had heard there was some union activity around the plant and asked him if he knew anything about it. He said yes, he knew all about it. And I asked him what, if anything, I should do and he said I should do nothing, he would be over in a day or *day* and see me.

Q. He did come over in a day or two?

A. Yes.

Q. You met him in the office, did you?

A. Yes.

Q. And did you have a conversation with him on that occasion?

A. Yes, sir. [666]

(Testimony of F. A. Willard.)

Q. How long did you talk to him, about?

A. Oh, just a very few minutes.

Q. And what was the conversation, what did he say and what did you say?

A. I asked him if he—again if he knew anything about what was going on, and he said yes, there was an effort being made to unionize all the ice companies in the Valley. And I asked him what I should do about it, if anything. He said I shouldn't do anything, that I shouldn't talk to any of the men, and just keep out of it entirely.

Q. Did you say something to him about because of his expert knowledge he should do something about it? A. No.

Q. Didn't you say to him about making some sort of investigation on it and letting you know about it?

A. No, he told me, he volunteered the information that if he should hear of anything that was out of line he would get in touch with me.

Q. After learning of this union activity from Pete Pool, why did you call Mr. Osborne?

Mr. Smith: Object to the reason why he called him as being argumentative. The question was what was done.

Trial Examiner Mouritsen: I will overrule the objection. I will permit him to give his reason.

The Witness: I knew the Associated Farmers were in [667] pretty close contact with things of that kind and I thought if anyone knew anything about it they would.

(Testimony of F. A. Willard.)

Q. (By Mr. Ryan): Then how long was it after that that Mr. Osborne came in to your office, as I understood you to testify that he did, and introduced this bargaining committee of the Association to you, approximately how long?

A. Well, that would be purely a guess. I would say two or three weeks.

Q. Now, did you hear Mr. Osborne testify?

A. Yes.

Q. To the effect that he sat in on one of the negotiations between the Association and the company regarding wages?

A. No, he didn't set in on any negotiations regarding wages. He came in with the bargaining committee, introduced them and right after that left.

Q. When was the first time you were approached by the Association or any representative of this Employees Association?

A. I couldn't give you a definite date on that.

Q. Who, at first, approached you to make any requests upon you in behalf of the Employees Association?

A. Mr. Harlan.

Q. Mr. George Harlan? A. Yes.

Q. And he came in by himself, did he, into your office? [668]

A. Yes.

Q. What time of day was that?

A. Well, I think probably that was in the morning.

Q. About what time in the morning?

A. I couldn't say.

(Testimony of F. A. Willard.)

Q. Well, would it be some time between 9:00 o'clock in the morning and noon—can you fix it some time like that?

Mr. Smith: We object. The witness says he doesn't know.

Trial Examiner Mouritsen: Overruled.

The Witness: I couldn't say. He came in the morning, to the best of my recollection.

Q. (By Mr. Ryan): What took place on that occasion when Mr. Osborne came into your office?

A. As I recall the time when Mr. Harlan came in by himself it was to request a date for a meeting of the bargaining committee.

Q. Did he have anything with him?

A. I don't recall that he did, no.

Q. You don't recall he gave you any proposals?

A. Not the time I am thinking of, no.

Q. Then he requested you, I understood you to say, for a meeting to meet with the bargaining committee of the Association?

A. Yes. [669]

Q. What did you say?

A. I told him I would be glad to meet with them any time.

Q. And about how long after that was it that you had occasion to meet with the bargaining committee for the first time or any representative of the union?

A. Probably a day or two following.

Q. A day or two following? A. Yes.

Q. About when was that, was that in the month of October?

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: Which one do you mean, when Harlan came in alone or when the others came in?

Mr. Ryan: Yes.

Q. (By Mr. Ryan): When Harlan first came in, would you say that was sometime in October?

A. I imagine it must have been in October.

Q. You think it was toward the latter part or the middle of October or the first of October?

A. Well, I couldn't say about that.

Q. Did I understand you to say it was a day or so after he had been in that you then met with some bargaining committee of the Employees Association?

A. Yes.

Q. Who did you meet on that occasion?

A. There was Stout, Harlan, and Drinkard, I think, maybe Gettle came in, too. [670]

Q. Was Tom Herring present?

A. I don't recall that Tom Herring was present, he might have been.

Q. Did they have any written document to give you on that occasion?

A. At the first meeting I don't think they did have any written document.

Q. Was that the occasion when Hugh Osborne came in with them?

A. No.—it might have been that meeting. My recollection is we met first and the result of the meeting was I suggested that they have their program they were talking about drawn up in writing. And then we had a following meeting to discuss that.

(Testimony of F. A. Willard.)

Q. At the time that Mr. Osborne came in, he introduced the bargaining committee to you and said the bargaining committee of the Employees Association wanted to bargain with you, isn't that right? A. That is right.

Q. Was that the first bargaining meeting you had? A. Yes.

Q. Just what did he say to you in that regard, Mr. Osborne?

A. My recollection now is that he told me that the boys had formed a union and this was the bargaining committee and they wanted to discuss certain things with me, and then [671] he left.

Q. Then did he indicate what those certain things were? A. No.

Q. What did you say in reply to Mr. Osborne on that occasion, if anything?

A. I don't know that I replied to Mr. Osborne. I told the boys I would be glad to discuss anything with them.

Q. Then did you proceed to have a discussion with the committee in your office?

A. Yes, we had a short discussion that first meeting.

Q. What was the subject matter?

A. Well, they wanted to discuss wages and vacations. There was a discussion of a relief man.

Q. Did you make any requests of them for—make any demands upon them for anything at all, or make any requests of them? A. Did I?

Q. Yes. A. No, sir.

(Testimony of F. A. Willard.)

Q. You listened to their proposals and then discussed them with them, is that right?

A. Yes.

Q. Regarding wages, hours and vacations?

A. Yes.

Q. Anything else? [672]

A. I don't recall of anything else now?

Q. About how long did that meeting last?

A. It was a very short meeting.

Q. About how long?

A. Oh, not over a half or three-quarters of an hour.

Q. What time of day did that meeting occur?

A. I think that was in the morning, too.

Q. Was any understanding reached at that meeting that you would meet again? A. Yes.

Q. Did they have anything in writing at that meeting, any proposals in writing?

A. No, not the first meeting; no.

Q. Then when were arrangements made to meet again at a specific time?

A. Not a specific date, no.

Q. Was that the understanding?

A. I asked them to have their subject we had been discussing, the things they wanted to cover—drawn up in writing, so that we could keep track of them and follow them up. And they adjourned with the idea of doing that.

Q. When was the next time you heard from the Association in regard to any further business?

A. Probably two or three days later.

(Testimony of F. A. Willard.)

Q. What was the nature of that contact? [673]

A. At that time they brought in the proposed agreement, written agreement.

Q. Who brought it in?

A. The Bargaining committee.

Q. Composed of the same people you have mentioned before? A. Yes.

Q. Was George Harlan on that committee?

A. Yes.

Q. Mr. Willard, I show you Respondent Ice Company's Exhibit 3, and ask you to tell me whether or not that was what was brought in to you by the committee?

A. My recollection is that was what we started negotiations with, they brought in.

Q. Now, this Respondent's Exhibit 3 is composed of three typewritten pages and there are two other pages attached to it, which are in writing, handwriting. Can you tell me at the time they brought this in, this committee brought in the proposals, whether or not the two pages in handwriting were also attached? A. Yes, they were.

Q. They were? A. Yes.

Q. Both of them? A. I think so, yes.

Q. Do you know in whose handwriting this writing, the [674] first page, which is a white page, in handwriting, whose that is?

A. That is Merl Stout's.

Q. Merl Stout's writing? A. Yes.

Trial Examiner Mouritsen: Is he M. K. Stout?

The Witness: M. K., yes.

(Testimony of F. A. Willard.)

Q. Do you know in whose handwriting the yellow page is written? A. Mr. Whitelaw.

Q. Mr. Whitelaw? A. Yes.

Q. Do you know at what time he wrote the matter on this yellow page which is part of Respondent Ice Company's Exhibit 3?

A. My recollection is that that came just as it is, just as it is bound, they brought it.

Q. Did it also have the paragraph contained on that yellow page, it is in pen, and there are some other notations and words in pencil. Do you know whether they were also on the yellow page when it was brought to you?

A. No, I put those on.

Q. You put those on there? A. Yes.

Q. What were the circumstances of your putting the writing [675] on there in pencil, on the yellow page?

A. For discussion of those subjects?

Q. Do you know who helped the—do you know if anyone helped the employees Association prepare that document? A. No, I don't.

Q. How did you know that Mr. Whitelaw wrote that material on the yellow page?

A. He told me he did.

Trial Examiner Mouritsen: Who did?

The Witness: Mr. Whitelaw.

Trial Examiner Mouritsen: Did you know it at the time that it was Mr. Whitelaw's writing?

The Witness: No.

(Testimony of F. A. Willard.)

Trial Examiner Mouritsen: Did you recognize it?

The Witness: No.

Trial Examiner Mouritsen: Or did you learn that afterward?

The Witness: Yes.

Q. (By Mr. Ryan): Then you proceeded to have a discussion regarding the material in Respondent Ice Company's Exhibit 3, did you, during this meeting? A. Yes, sir.

Q. At the end of that conference, was there any understanding between the parties, yourself and these employees' representatives, that you would meet again? [676] A. Yes.

Q. Did you give them any directions or suggestions or proposals as to what to do in the meantime, after this meeting was over, until you met again?

A. I suggested again that they have it redrafted covering the things we had agreed upon.

Q. And do you know whether or not they did?

A. Yes, they did.

Q. Do you know where they had it done?

A. No, I do not.

Q. When did you next meet with the representatives of this Employees Association?

A. Well, it was a short time following this meeting.

Q. A matter of a few days?

A. Yes. I know that these conferences went over November 1st, because we—that was one of the

(Testimony of F. A. Willard.)

things we discussed, and I told them that whatever decisions we came to we would date back to November 1st.

Q. Over how long a period did these last, approximately? From the time you first began negotiating until the contract was agreed upon?

A. I would say along the middle of November.

Q. I mean, approximately how many weeks elapsed between the beginning of the first negotiations and the final negotiation, which resulted in the contract? [677]

A. About two or three weeks.

Q. Now, you told them after this meeting that you have told us about, that you suggested they go out and have this Respondent Ice Company's Exhibit 3 redrafted, is that right? A. Yes.

Q. Now, you met with them thereafter in a few days? A. Yes.

Q. And at that occasion did they have any other document? A. Yes, they did.

Q. Do you know where that document is now?

A. No, I do not.

Q. Was that the document that was finally signed?

A. No. There was one more change made in that last document they submitted.

Q. Was that the final meeting, final negotiation meeting? A. I believe it was, yes.

Q. I mean after they took this Exhibit 3 and had it redrafted and brought it in to you, was that the final negotiation meeting?

(Testimony of F. A. Willard.)

A. No, there was one more meeting when we discussed that one change in the rate.

Q. The wage rate?

A. The wage rate.

Q. So you had two meetings then on the redraft that they brought in to you of this Exhibit 3, Respondent Ice Company's [678] Exhibit 3?

A. Two meetings on the redraft?

Q. Yes.

A. There was—you figure the meeting with this one the first one?

A. As I understand it, after you discussed this Exhibit 3, told them to go out and get a redraft, which you say they did, then you had a meeting which was three or four days after this, after you had told them to have this redrafted. Then you discussed that redraft with them at the meeting, is that right? A. Yes.

Q. And you discussed it again at another meeting after that, is that right?

A. No, that is not right, they brought this redraft it. My recollection is they brought this redraft in and there was this question of rate, and that was in error, and that was the only thing that was to be changed, and that was all.

Q. Did you reach a conclusion at that meeting to go ahead and agree—did you reach an agreement then on a contract? A. Yes.

Q. Then who had the contract drawn up?

A. There was a matter of changing—just chang-

(Testimony of F. A. Willard.)

ing the price and they asked if we couldn't do that. That was the only change made in the contract.

[679]

Q. The Employees Committee asked if you couldn't do that?

A. Yes, and I don't know how it came about, but, anyway, that contract was taken to a public stenographer in Holtville and copied.

Q. Didn't you have anyone in your office who could do that work? A. Oh, yes.

Q. How did it happen you did not have it done in your office? A. Advised not to.

Q. By whom? A. Mr. Whitelaw.

Q. R. B. Whitelaw? A. Yes.

Q. Had you been in contact with him from time to time during these negotiations?

A. I don't recall that I was.

Q. When did you get the advice from him not to do that, not to draft that yourself?

A. Well, he advised that early in the—before we had made any negotiations, not to have anything to do with it.

Q. Well, approximately when was it that you got in touch with him and got these instructions from Mr. R. B. Whitelaw?

A. Well, that was soon after I had talked with Mr. Osborne.

Q. And what was the nature of your contact with Mr. R. B. [680] Whitelaw? Did you go to see him or call him on the telephone or did he come to see you, or how did it happen?

(Testimony of F. A. Willard.)

A. No, I went over to see him.

Q. You went up to his law office to see him?

A. Yes.

Q. Was anyone with you, just you and Mr. Whitelaw present?

A. I don't recall whether Mr. Smith was with me or whether I was alone.

Q. Mr. Herman Smith, you mean?

A. Yes; probably Mr. Smith was with me.

Q. Will you tell us what conversation you had at that time with Mr. R. B. Whitelaw?

A. We had the same conversation that I had with Mr. Osborne. I asked him what I should do and if—if anything, and he said I shouldn't do anything, shouldn't even discuss it with my employees.

Q. How long did you confer with Mr. Whitelaw on that occasion, about?

A. Probably half, three-quarters of an hour.

Q. Well, did he say anything about your drafting this contract at that time? A. No.

Q. Well then, when did you get the instructions from him not to draft the contract?

A. I didn't get any instructions from him not to draft it. [681]

Q. I thought you just testified that you got instructions from him not to draft the contract yourself in your own office?

A. No, I didn't testify to that. I said he advised me not to do anything, not even to talk with the employees.

(Testimony of F. A. Willard.)

Q. At that time was Mr. R. B. Whitelaw retained by you as your lawyer? A. No.

Q. Was he being retained by you?

A. He was then, yes.

Q. At that particular meeting?

A. Yes. I went in to see Mr. Smith, who is my attorney, and he advised me to go to Whitelaw because he was familiar with that line of work.

Q. What line of work?

A. Matters dealing with the unions and National Labor Relations Board matters.

Q. You say you took the contract to a public stenographer to have it drafted?

A. No, I didn't say I took it.

Q. I mean the company. You had it sent there?

A. My recollection is Herman took it up there.

Q. Herman Smith? A. Yes.

Q. To a public stenographer? [682]

A. Yes.

Q. Here in El Centro? A. No, Holtville.

Q. Holtville? A. Yes.

Q. Who paid the stenographer for that work?

A. I don't know whether the company paid for it or not.

Q. Who is the principal owner of the Holtville Ice and Cold Storage Company? A. I am.

Q. Who are the Board of Directors?

A. How is that?

Q. Who are the Board of Directors?

Mr. Smith: You mean the present board?

Q. (By Mr. Ryan): Who are they now? And I will find out later on who they were before.

(Testimony of F. A. Willard.)

A. Mr. Dave Vencill, Herman Smith, Lena Bridenstein and myself.

Q. Who was this Lena Bridenstein?

A. Bridenstein, yes.

Q. What was the name of the girl—the stenographer that you took the contract to be redrafted by?

A. Lena Bridenstein.

Q. At that time she was a director of the company? A. Yes. [683]

Trial Examiner Mouritsen: They own about one share of stock apiece, is that the set-up, or do they own a substantial part of it?

The Witness: One of them owns a substantial part.

Trial Examiner Mouritsen: Which one?

The Witness: Dave Vencill.

Q. (By Mr. Ryan): Where does he live?

A. Holtville.

Q. Does he take an active part in the operation of the business? A. No.

Q. You and Herman Smith are the only two who are actively engaged in the plant in the operation of the business? A. That is correct, yes.

Trial Examiner Mouritsen: Do you own the substantial majority of the stock, yourself?

The Witness: About 65 per cent.

Q. (By Mr. Ryan): There was at least one occasion, was there not, Mr. Willard, during the negotiations between the company and this Employees Association wherein a considerable number of the employees was present, is that right? A. Yes.

(Testimony of F. A. Willard.)

Q. Who were they that were present?

A. Well, there was Stout, Harlan, Gettle, Drinkard, Tom Herring, Simon Hogue. [684]

Q. Was Morgan present?

A. I believe he was, yes. O'Neal was present, too.

Q. Is that all you can remember?

A. Yes.

Q. Or is that all that were present?

A. That is all I recall right now.

Q. Mr. Willard, I show you Board's Exhibit 4 in evidence and direct your attention to the date of the contribution there November, 1941, \$150, contributed by the Holtville Ice and Cold Storage Company to the Associated Farmers. Did you give that money to Mr. Osborne?

A. I couldn't say.

Q. You don't know how you made that contribution? A. No.

Q. What time in November was it made, do you know? A. I couldn't say that.

Q. November, 1941? A. Yes.

Q. Do you know how you happened to make it right at that particular time?

A. No, I don't. We make them every year. 1936 we made one in November.

Mr. Smith: You made one in December of '39 also, did you not?

The Witness: Yes. [685]

Q. Now, you stated that you notified Mr. Herman

(Testimony of F. A. Willard.)

Smith to let Mr. Davis go early in June before you went on your vacation, substantially that?

A. Yes.

Q. And did you state that immediately upon your return you again talked to Mr. Smith and told him to let Mr. Davis go? A. Yes.

Q. When did you tell him that?

A. Well, it was soon after I returned, the middle of September, about the 20th of September.

Q. Did Mr. Smith then immediately let Mr. Davis go in accordance with your instructions?

A. I think within a reasonable time, yes.

Q. What do you consider a reasonable time?

Mr. Whitelaw: Objected to as argumentative.

Trial Examiner Mouritsen: I will overrule the objection.

The Witness: I would say within a few days.

Q. (By Mr. Petersen): A few days.

A. I recall he was paid up to the 1st of the month, if that is any information to you. [692]

Trial Examiner Mouritsen: Did you pay him in advance?

The Witness: Yes.

Q. (By Mr. Petersen): When you told Mr. Smith—I believe you heard Mr. Davis' testimony in Mr. Smith's cross examination on the basis there was a great deal more office work during the off season in 1941 than there was in other years, did you hear that here in this hearing room?

A. Yes.

(Testimony of F. A. Willard.)

Q. Did you consider the extra amount of office work that would be necessary for Mr. Davis to do when you asked Mr. Smith to let him go that summer?

A. Well, I don't know where the extra amount of work was in the office.

Q. Did you put on—or did the company put on an additional employee in the office to take care of that extra office work? A. No, sir.

Q. Was Mr. Garber employed in the office previous to the summer of 1941?

A. My recollection is he came to the office in the spring of 1941.

Q. Did he work full time during the spring of 1941?

A. No, he came first—first he worked—he was going to school and he worked in the afternoons, I am not sure he worked every afternoon. [693]

Q. Did Mr. Garber work continuously during the summer months, July, August and September of 1941?

A. Well, I couldn't say as to that. Mr. Smith can give you that testimony.

Q. To the best of your recollection.

A. I wasn't there at the time.

Q. Was Mr. Garber still employed by the company in the office after 1941 season started, the latter part of October?

A. He was employed in the office and on the platform, too, worked both places.

(Testimony of F. A. Willard.)

Q. He was retained in the employ of the company? A. Yes.

Q. Working both in the office and on the platform? A. Yes.

Q. The same type of work that Mr. Davis had previously performed?

A. He did some of it, yes.

Q. What was the difference between the type of work that Mr. Garber did and the type of work that Mr. Davis did, both in the office and on the platform, to the best of your knowledge?

A. There was a lot of the work that Davis did we didn't figure was necessary, and it was discontinued.

Q. What work was that?

A. He made up summaries of the vegetable ice for the [694] season and tabulations of that kind.

Q. That was during the off season you made those up? A. Yes.

Q. During the working season, at the time you were shipping ice to the vegetable sheds, what was the difference in the type of work that Mr. Garber was doing at the commencement of the 1941 shipping season, and the work previously performed by Mr. Davis?

Mr. Smith: Just a minute. I believe I will object to that in view of the fact it has been intimated Davis is not included in this unit, it would be immaterial.

Trial Examiner Mouritsen: He is included in the

(Testimony of F. A. Willard.)

charge that he was discriminatorily discharged. I will overrule the objection.

The Witness: You better get that information from Mr. Smith.

Q. (By Mr. Petersen): To the best of your knowledge what was the difference? What did you see what the difference was, yourself?

A. Well, after Davis left about the only work that I recall that was done in the office that Davis had been previously doing was making the payroll; Garber did that work.

Q. He did the same work in the office?

A. Yes. [695]

Q. Now, on the platform, what did Mr. Garber do after the season started and what did Mr. Davis do?

A. He would wait on the clear ice customers.

Q. Who is that "he", Mr. Garber?

A. Garber. Davis did that once in a while.

Q. What other work did Mr. Garber do during the 1941-'42 shipping season, after they began to distribute ice to the vegetable packing sheds?

A. Well, he made up the daily reports of the vegetable ice sales.

Q. Had Mr. Davis previously done that?

A. No.

Q. Who made up the reports for the vegetable ice sales previously? A. Garber did.

Q. Before Garber—I mean the year before Garber was employed. Who made them up in 1940-'41 season?

(Testimony of F. A. Willard.)

A. I don't know whether Herman Smith made them up at that time or whether it was the man on ahead of Garber.

Q. I believe you testified that Mr. Garber wasn't employed before May, 1941, or thereabouts, to the best of your recollection? A. Yes.

Q. Was there another man there before Mr. Garber, who was taking care of the platform? [696]

A. Yes.

Q. Who was that?

A. Well, I don't recall his name now.

Q. And previously, during the shipping season, you had including Mr. Herman Smith in the office, three clerical employees each year during the shipping season, is that right?

Mr. Smith: Mr. Davis, Mr. Garber and Mr. Garber's predecessor?

The Witness: That is true.

Q. (By Mr. Petersen): Do you still have three men during the shipping season? A. Yes, sir.

Q. Has Mr. Garber been put on full time work since Mr. Davis' services terminated with the company.

A. Well, I don't recall just when he was put on full time service.

Q. Did he work full time during the off season in 1942 from the close of the shipping season to the commencement of the operations the next year?

A. To the best of my recollection he was on full time during the domestic ice season, that would be through the hot weather in the summer.

(Testimony of F. A. Willard.)

Q. Which was until about the last of September or October? A. Yes. [697]

Q. I believe you testified that Mr. Smith had told you that Mr. Herman Pool was getting some breaks in the work down at the plant, is that right?

A. Yes.

Q. Did you investigate that matter, yourself?

A. Did what?

Q. Did you investigate that matter, yourself?

A. No, I didn't.

Q. Did you attempt to see whether Mr. Pool was working a shift the same as the other engineers of eight hours per day?

A. Oh, I knew that, yes.

Q. Now, in the operation of the engine room was it a practice for the engineers each to work a shift in the engine room? A. Yes.

Q. Did those shifts rotate or one man on days and one man on nights and one in the middle in between, all the time? A. They rotated.

Q. They rotated the shifts? A. Yes.

Q. Did you point out to Mr. Smith that with rotating [700] shifts and each man taking a shift there could be no differentiation in the amount of time each employee put in?

A. No, I didn't discuss it with Mr. Smith at all.

Q. You took Mr. Smith's statement as authority then?

A. I didn't take any action on it at all.

Q. Mr. Herman Fruhn, you stated that he monkeyed around with the machinery a little bit?

(Testimony of F. A. Willard.)

A. Yes.

Q. Substantially, I don't believe you used that word. Had that been going on a great many years or was it just a new thing at your place?

A. That was the nature of the man.

Q. I am asking did he do that over a long period of time? A. Yes.

Q. And you had re-employed Mr. Fruhn each year irrespective of his shortcomings in that regard? A. Yes.

Q. Did you or did you not notify any of your supervisors to notify Mr. Fruhn at the close of the 1941 shipping season that his services would no longer be required? A. No, sir.

Q. Was it a general practice to hire Mr. Fruhn back each year when the season started again?

A. It had been up to that time, yes.

Q. I believe you testified you met with Mr. Pete Pool [701] and drew up your list of employees that you wanted for the coming season? A. Yes.

Q. Was that your common practice each year?

A. No.

Q. Why was the change made in 1941, the commencement of the '41-'42 shipping season that you met with Mr. Pete Pool to discuss who was to come back and who wasn't?

A. Because we had to reduce the number of men, the employees and the selection of who we would drop off and who we would keep on.

Q. Did you put on any new employees in 1941-'42 season who hadn't been employed previously?

(Testimony of F. A. Willard.)

A. Oh, yes, we do that every year.

Q. When you drew up the list of who was to come back and who was not to come back, did you figure out just how many men were to be eliminated?

A. No, we figured out the number of men we wanted to start the plant with and put those men to work. [702]

Q. (By Mr. Petersen): Did Mr. Pete Pool say anything about the type of union that was coming into the plant? A. No, sir, he did not.

Q. What did Mr. Pool say to you?

A. He said, "I guess the plant has gone union." [703]

Q. Did you say anything about the plant—to Mr. Pool about the plant going union then?

A. No, sir.

Q. I believe you testified that you didn't expect any returns from the Associated Farmers through your membership? A. That is right.

Q. Do you attend any Associated Farmers' meetings, general meetings? A. No.

Q. And I believe you subsequently testified that there were certain troubles about the truck drivers between here and Los Angeles, didn't you?

A. Yes.

Q. And did you testify that——

Mr. Smith: Pardon me. Subsequent? Prior to this.

Mr. Petersen: It was subsequent——

Q. (By Mr. Petersen): Did you testify that you

(Testimony of F. A. Willard.)

talked to Mr. Osborne concerning getting fuel oil through? A. Yes, I did.

Q. When did you do that?

A. That was——

Mr. Yeager: When did he testify or when——

Mr. Petersen: No.

Q. (By Mr. Petersen): When did that occur that you talked to Mr. Osborne? [704]

Trial Examiner Mouritsen: When did it occur with reference to the time you joined the Associated Farmers, before or after?

The Witness: It was at that time.

Q. (By Mr. Petersen): It was at that time?

A. Yes.

Q. What did Mr. Osborne say to you then in 1936, I believe you joined, is that right? Did you join the Associated Farmers in 1936?

A. Yes. He was soliciting membership for the Associated Farmers.

Q. What did Mr. Osborne say to you about getting the fuel oil through?

A. He asked me if I was having any trouble getting fuel oil through. First he asked me how my fuel oil was coming down and I told him by truck. And he asked me if I was having any trouble getting it down. I told him, no, we haven't, so far.

Q. What further transpired?

A. He said, "If you do have any trouble we can get it through for you. If necessary we can go to the city and bring it down."

(Testimony of F. A. Willard.)

Q. In other words, Mr. Osborne did offer you some returns on behalf of the Associated Farmers if it became necessary to you? [705]

A. Yes, that is true, in that particular.

Mr. Ryan: May I ask a question?

Mr. Petersen: Certainly.

Q. (By Mr. Ryan): You said they would do that even if it were necessary to go to the city. What city do you have reference to?

A. Los Angeles.

Q. You were getting your fuel oil at the time from Los Angeles? A. Yes.

Q. Being brought in here on trucks, as I understand? A. Yes.

Cross Examination

Q. (By Mr. Petersen): Now, you stated the first meeting you had with the Employees Association committee as a whole Mr. Osborne came in and introduced them as the committee for the Employees Association, is that right?

A. The bargaining committee.

Trial Examiner Mouritsen: I think this has been covered.

Mr. Petersen: I am going to ask just a foundation, I have to go back.

Trial Examiner Mouritsen: All right.

Q. (By Mr. Petersen): Did you know the men on this committee previous to Mr. Osborne's introducing you to them? [706]

A. Yes, I knew them.

(Testimony of F. A. Willard.)

Q. Did Mr. Osborne say anything further than just introducing the committee and saying, "This is the committee from the Employees Association"?

A. Well, he said they wanted to meet with me and negotiate with me, negotiate with me or bargain with me.

Q. Did you then ask Mr. Osborne and the committee for any showing concerning who they represented at that meeting?

A. I presume I did, I don't recall it now.

Mr. Ryan: I move to strike the answer unless he—What he presumes, Mr. Examiner.

Trial Examiner Mouritsen: I will leave it in.

Q. (By Mr. Petersen): What did they show you, if anything, that you remember to show they had the bargaining rights?

A. They didn't show me anything.

Q. You just accepted their word they represented the Employees Association as the truth, and started bargaining with them?

Mr. Whitelaw: Objected to as argumentative, Mr. Examiner; this has all been gone into several times.

Mr. Petersen: It never has.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

Read the question.

(The question was read.) [707]

The Witness: Yes, that is true. [708]

Q. (By Mr. Petersen): You heard Mr. Wells'

(Testimony of F. A. Willard.)

testimony, that he called on you about the 28th of October, didn't you? A. Yes.

Trial Examiner Mouritsen: 1941?

Mr. Petersen: 1941.

Q. (By Mr. Petersen): Was that approximately the time he called on you, to the best of your knowledge? A. So far as I know, yes. [715]

Q. Did you state that the Employees Association, through Mr. Harlan, had presented some proposals to you in the middle of October, 1941?

A. We must have been negotiating then, because the contract was made, was dated November 1st. And negotiations weren't completed until after November 1st, and dated back.

Q. But you had been negotiating previous to November 1st? A. Yes.

Q. Then you stated you couldn't discuss the proposal of the Teamsters Union until you had looked it over and conferred with the Board of Directors?

A. That is correct. [716]

Cross Examination

Q. (By Mr. Whitelaw): When you came to me for advice you came to me concerning the general situation of what an employer could do with respect to any union activity in your plant?

A. Yes, sir.

Q. And you were advised by me, after discussion, that you could do nothing, neither could you nor your supervisory personnel take any part in the union activity? [725]

(Testimony of F. A. Willard.)

The Witness: Yes, that is the object of the advice and the instructions I received.

Mr. Whitelaw: That is all. [726]

Trial Examiner Mouritsen: Mr. Willard, is the work in the storeroom of a heavier or more difficult nature than that of can pulling?

The Witness: Yes, it is, it is more undesirable work, less desirable work. [727]

Q. Did you know that Mr. Whitelaw had prepared that first proposal?

A. I don't know that he did.

Q. You since ascertained that was true?

A. Yes.

Mr. Whitelaw: Haven't you since ascertained that since we came into this hearing, Mr. Willard?

The Witness: Yes, sir, that is true.

Cross Examination

By Mr. Petersen:

Q. Mr. Willard, did you inform your employees they could join a union or not join a union?

Mr. Whitelaw: Objected to as indefinite and uncertain as to time and place.

Trial Examiner Mouritsen: It wouldn't be objectionable upon that ground if it were at any time. [729]

Mr. Whitelaw: We withdraw our objection.

Q. (By Mr. Petersen): Did you?

A. Yes.

Q. How did you notify the employees?

A. It was at one of their meetings.

(Testimony of F. A. Willard.)

Q. Whose meetings?

A. The Employees Association meetings. They asked me—the way they did it, they asked me if they could join both unions; I told them they could join any union or stay away from any union.

Q. That was after the Employees Association was formed that you told your employees that?

A. Yes.

Q. Not previous to the Employees Association being formed? A. No.

Mr. Petersen: That is all.

Redirect Examination

By Mr. Smith:

Q. Mr. Willard, do you recall that shortly prior to your first meeting with the Employees Association whether or not Herman Smith ever told you that Tom Herring was in the office to see you?

A. Yes.

Q. And did Herman Smith tell you what Tom Herring wanted to see you about?

A. Yes. [730]

Q. What did he say?

A. He said he wanted to talk over the matter of forming a union, company union, Employees Association.

Q. What did you tell Herman Smith?

A. I told him I couldn't discuss it with him.

Q. Did you say anything else that you now recall?

A. Well, I don't recall Herman—at that time I was in the garage and Herman phoned me.

(Testimony of F. A. Willard.)

Q. I see.

A. And asked—told me that Tom was in there and wanted to discuss this with me. And I told him to tell Herman I would like to do it, but I couldn't do it.

Q. Told Herman?

A. Told Herman to tell Tom I couldn't discuss it with him.

Mr. Petersen: Can you fix a time?

Q. (By Mr. Smith): Can you fix a time on that, Mr. Willard?

A. It was evidently before they had formed their association, while negotiations were going on; it must have been some time the middle part of October.

Mr. Smith: That is all. [731]

PETE POOL

called as a witness by and on behalf of Respondent Holtville Ice and Cold Storage Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Smith:

Q. Will you state your full name, please?

A. Pete Pool.

Q. Mr. Pool, when did you first commence working for the Holtville Ice and Cold Storage Company?

A. I think it was in 1928.

(Testimony of Pete Pool.)

Q. Have you worked continuously since then?

A. No, I haven't.

Q. How much of the time have you been off?

A. Oh, I would say about 18 months.

Q. You spent more than ten years working for the company, have you?

A. Yes, sir.

Q. When did you become foreman or superintendent?

A. 1939, I think it was.

Q. And as superintendent did you employ men and lay men off?

A. I did.

Q. For what department?

A. For the production end.

Q. What did that include?

A. Well, that includes storeroom, tank men, and the engine [733] room men.

Q. Are you the one that assigned men to the engine room since you have been superintendent?

A. Yes, sir.

Q. Now, Mr. Pool, going to the summer of 1941, there has been lots of testimony about changing over from Diesel to electric power. I am not going to take time to go into that with you. Did that change-over make any difference in the kind or character of employees you needed in the production end to carry out your part of the program?

A. Yes, in a way it did, and in a way it didn't.

Q. Well, explain.

A. Well, in a way it did. I needed pretty experienced men because the plant was tore all to pieces, and I kept the men on, the old men that

(Testimony of Pete Pool.)

I thought would take care of it, preserve the pieces.

Q. Well, what class of employees were you able to get along without when you made the change-over?

A. Well, I could have got along without any practically.

Q. What class of employees did you do away with when you changed over?

A. I done away with can pullers, storeroom men.

Q. Wait a minute. You don't understand my question.

Trial Examiner Mouritsen: He means did you eliminate the engine room employees. [734]

Q. (By Mr. Smith): When you changed over from Diesel power to electric power, did you have any use for the engine room men, as a type or as a class?

A. Yes, sir.

Q. You didn't have any engine room for them to run?

A. No, I didn't.

Q. What do you mean by your answer then?

A. Well, to be frank with you, when we was changing over the most of these men worked under the supervision of a York man, not under me; they worked under a York man.

Q. Now, Pete, when you had Diesel engines, how many engine room operators did you have?

A. I had four in '41, when we closed the summer of '41, and one relief.

(Testimony of Pete Pool.)

Q. All right. Did you have any maintenance men? A. Yes, sir, I had two.

Q. Two, all right. Would there be any work for those men to do in the new set-up with the electric power, similar to what they had been doing when you had the Diesels?

A. No, sir, not any.

Q. All right. So when the change-over was made, that permitted you to do away with some employees, did it? A. It did.

Q. How many?

A. Well, it permitted me to do away with seven, I think. [735]

Q. All right. Did you, as a matter of fact then, assign some of those seven men to other work in the plant? A. I did.

Q. When the change-over was made?

A. Yes.

Q. And on what basis did you select the crew that was to commence the—in the fall of '41 to make ice?

Mr. Ryan: I think that calls for a conclusion.

Mr. Petersen: We object to that, it calls for a conclusion.

Mr. Ryan: Explain the details he went through.

Trial Examiner Mouritsen: Well, I will permit him to answer. He said what was the basis. The factors, he considered, I assume.

Mr. Smith: That is right.

Q. (By Mr. Smith): What were the factors

(Testimony of Pete Pool.)

you considered in choosing the crew to start the plant with in the fall of '41?

Mr. Petersen: We object on the basis that there has been no showing Pete Pool did the choosing of who had been there.

Trial Examiner Mouritsen: Did you participate in the selection of employees who were to commence the plant in the fall of 1941?

The Witness: I did, sir. [736]

Trial Examiner Mouritsen: Did you participate or did you confer with Mr. Willard regarding that?

The Witness: Why, yes, me and him——

Trial Examiner Mouritsen: Not with anyone else? Was Mr. Willard the only one with whom you conferred regarding the employees who were to start the new season at the end of 1941?

The Witness: That is right.

Q. (By Mr. Smith): What factors did you take into consideration in choosing which men you desired to use to start the plant with in '41?

A. I didn't get that last question.

Q. Well, on what basis did you pick the men you started the plant with?

A. I picked the men, what I thought was the best suitable for the job.

Q. Now, did you, Mr. Pool, lay off men during the summer of '41, before Mr. Willard returned?

A. I did.

Q. Can you name over some that you laid off prior to his return?

(Testimony of Pete Pool.)

A. I laid off Simon Hogue, Lloyd Gettle, Stanley Harlan, Dick Ireland, Herman Fruhn.

Trial Examiner Mouritsen: Was that the man who was here the other day and testified? [737]

The Witness: Yes, sir. Perry Blankenship.

Q. (By Mr. Smith): Is that all?

A. That is all I can remember.

Q. And is it possible there are others whose names you do not recall? A. Yes, there are.

Q. Now, did you just use your own judgment in laying those men off? A. I did, sir.

Q. When Mr. Willard left for his vacation, did he give you any instructions regarding laying men off? A. Yes, sir.

Q. What did he tell you about that?

A. He told me when I got through with the men, what men I didn't want, to lay them off, if I didn't have any work for them.

Q. And do you remember the approximate dates you laid off those various men?

A. I wouldn't be positive, though, I think it was in July, around about the 10th or the 15th of July.

Q. Now, how then did you determine when to lay off each man, what made you make up your mind about the date for laying off each individual man?

A. I didn't make up my mind for the date of laying off each individual man. I only laid them off when I didn't [738] have any work for them,

(Testimony of Pete Pool.)

happened to come that time of the year, why, no work, why, I laid them off.

Q. I see. Now, the witness Blankenship said that he worked from May, 1940, to some time in July, 1940, and when he was laid off he was told to come back in the fall by you.

Mr. Petersen: I am going to object——

Q. (By Mr. Smith): Is that right?

Mr. Petersen:——to this, as an entirely leading question. He can ask about Mr. Blankenship.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: I didn't get the question.

(The question was read.)

The Witness: No, not in 1940-1941; 1940 I did tell him to come back.

Q. (By Mr. Smith): Was there anything said to him when you laid him off in 1941, July of 1941?

A. No, sir.

Q. Did he ask you whether or not he was to come back?

A. No.

Q. Had he asked you the previous year?

A. He did.

Q. Why didn't you say something to him, whether he was or was not to come back in the fall of '41?

A. Well, the time I laid him off I knew I couldn't use all [739] the men I was laying off, when we started up in 1941 in the fall, is the reason I didn't say anything to him.

(Testimony of Pete Pool.)

Q. Now, did you ever tell him, in substance, "I don't think the union will ever make a success of it"?

Mr. Petersen: To which we are again going to object, it is very leading and suggestive.

Trial Examiner Mouritsen: I will overrule the objection.

Mr. Ryan: That is proper.

Mr. Smith: That is proper.

Trial Examiner Mouritsen: I am glad we are almost unanimous.

Mr. Ryan: I didn't mean to say anything. It sort of came out; I guess I was thinking out loud.

(The question was read.)

The Witness: Yes, I did.

Q. (By Mr. Smith): Did you say anything more to him?

A. Well, I talked to Perry Blankenship a number of times.

Q. Now, regarding the witness Fredenburg. Were you the one that laid him off?

A. No, sir, I did not lay him off.

Q. He testified that you asked him a few days after September 26, 1941, if he had joined the union. And he said he told you, "Yes." Did you ask him if he had joined the union? [740]

A. Well, I couldn't answer that question. I might have, I wouldn't say I did or I wouldn't say I didn't.

(Testimony of Pete Pool.)

Q. All right. If you did, did you communicate his answer to either Mr. Willard or Herman Smith?

A. No, I didn't.

Q. Did you ever tell Mr. Willard or Herman Smith that Fredenburg had or had not joined the union?

A. I did not.

Mr. Petersen: I move to strike the last question and answer, the witness had previously testified he didn't know whether he talked to Mr. Fredenburg.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Smith): Now, this witness Blankenship also said that about the time the plant started up in October of 1941, that he asked you for a job, and you never answered him. Do you recall whether or not he did ask you for a job?

A. No, I don't.

Q. Do you recall anything he asked you you didn't answer him?

A. No.

Q. Now, do you know the witness Fruhn, Henry Fruhn—or Herman Fruhn?

A. Sure, I know the witness.

Q. How many years have you known him?

A. Oh, I would say about 13 years. [741]

Q. And he was a crane operator most of that time, was he not?

A. He were.

Q. What kind of a crane operator was he?

A. Well, he was a good crane operator and a bad crane operator.

Q. Explain what you mean.

(Testimony of Pete Pool.)

A. He could pull his ice all right, though he was always fooling with the crane.

Q. What do you mean, "fooling with the crane"?

A. Well, the crane hoist has a brake on it, adjustment, and he was always changing the adjustment on the brakes on the crane and getting them to where it wouldn't hold or where you couldn't stop the crane, the brakes on it. [742]

In other words, a crane is just like a watch, as long as you leave it alone when it is running good, it is all right.

Q. Well, what effect did his fooling with the crane have on the crane?

Mr. Ryan: I object to that as a conclusion, calling for a conclusion.

Trial Examiner Mouritsen: I will overrule the objection.

Mr. Smith: This man is the superintendent of the plant.

The Witness: Well, sometimes, why, you would have to call a man out to fix it, readjust the crane.

Q. (By Mr. Smith): Well, did his crane get out of adjustment any more than the other cranes?

A. It did.

Mr. Ryan: Object to that conclusion.

Trial Examiner Mouritsen: Overrule the objection. Answer the question.

The Witness: Yes, it did.

Q. (By Mr. Smith): How much more than the others?

(Testimony of Pete Pool.)

A. Well, to be frank, why, he was about the only man that it got out of adjustment on.

Q. Well, why was he not selected to commence work in the fall of '41?

Mr. Ryan: I object to that as calling for a conclusion. He can tell what he did by way of deciding what to do. I think it calls for a conclusion of this witness. [743]

Trial Examiner Mouritsen: I will overrule the objection.

You can go into it on cross examination. Answer the question.

The Witness: Answer that question?

Trial Examiner Mouritsen: Yes.

The Witness: When I selected the men I didn't want him to pull ice, and I figured he couldn't take care of the job in the store room.

Q. (By Mr. Smith): So you left him off?

A. I let him off.

Q. Now about the witness Lester Hart. Pete, what work did Lester Hart do up until the time his services were terminated?

A. Well, he was counted as a machinist, he done Diesel work, and a little electrician work, a little lathe work and a little work on sheds.

Q. All right. Now, has anyone ever been employed at the Holtville Ice Company since his services were dispensed with, to take his place?

A. No, sir.

Q. Who has been doing the mechanical work he formerly did?

(Testimony of Pete Pool.)

A. Well, I have been doing it myself, small jobs, the other mechanical work, big jobs, we send it out to do it, such as electric motors, such as that; Joe Bush does that.

Mr. Ryan: Mr. Smith, I don't want to interrupt. I think it would be well to find out who Joe Bush is at this point. [744]

Q. (By Mr. Smith): Who is Joe Bush?

A. He is an electrician here in El Centro, a contractor, I presume.

Q. Does he have a store?

A. He has a store.

Q. Shop?

A. A store and a shop in El Centro.

Q. Does all kinds of electrical work?

A. Yes.

Q. Does he have a number of employees?

A. He does.

Q. Has the Holtville Ice Company ever equipped its plant to do that big electrical work?

A. No, sir.

Q. But you did the repair work when you had the Diesels, is that correct? A. We did.

Q. Including overhauling of the motors?

A. No, we didn't have any motors to overhaul, when we had the Diesels, generally the electric driven off the Diesels; we sent those to Los Angeles.

Q. The electric motors?

(Testimony of Pete Pool.)

A. Yes, to have them repaired, and I think Joe Bush repaired some at that time.

Q. Who did the mechanical work on the Diesels, though? [745]

A. Well, Lester Hart done the mechanical work on the Diesels.

Q. All right. Well now, has there been any change, Mr. Pool, in the last few years in the amount of maintenance and repair work the ice company has done on the various packing sheds?

A. Yes, there has.

Q. What has the change been?

A. Well, for the last four years we have been trying to get the packing companies to do their own work, and each year it is less.

Q. Less what?

A. Less work at the packing sheds.

Q. Done by whom?

A. Done by the packing sheds. We mighty seldom do any work for them at all.

Q. You say less work done by the packing sheds or less work done by the ice company?

A. Less work done by the ice company.

Q. Who does whatever the ice company does do now at the packing sheds?

A. Well, I do the most of it.

Q. What does it consist of?

A. Putting in crusher teeth, sharpening crusher teeth, ice crushers.

Q. Did you hear the witness Hart testify? Mr. Hart, did you hear him testify? [746]

(Testimony of Pete Pool.)

A. I did.

Q. Well now, some time after September 26th, did you have a conversation with him regarding the fact that he had made application for a union?

A. I did.

Q. He said that you asked him, "Why didn't you take me, what are you trying to do, blackball me?"

A. I did.

Q. And did you tell him you would like to join, too?

A. Well, as I remember, I did.

Q. Did you mean it?

A. Certainly.

Q. And then he testified that when Mr. Willard came back, that he, Hart, had a conversation with you when he came down one day and he asked you how Mr. Willard took it, or something to that effect, about the men joining the union, and you told him, "Mr. Willard is sure mad." Now, did you say that in those words?

A. Well, I don't remember; not exactly in those words maybe.

Q. What is your best recollection of what you did say to him?

A. Well, the best recollection, I said to him, I told him—he came in one morning a few days after Mr. Willard had come back, that Mr. Willard was mad that morning.

Q. Now, did Mr. Willard make any reply to you when you told [747] him the men had gone union?

A. He did not, sir.

Q. Did he tell you he was mad?

(Testimony of Pete Pool.)

A. No, sir.

Q. What made you say he was mad then?

A. Well, when I told him that I thought all the men had went union, he didn't give any answer and turned around and walked off and left me, and I presumed he was mad.

Q. So you are just drawing your own opinion on that? A. Yes, sir.

Q. Is Mr. Willard a very talkative man around the plant? A. No, he isn't.

Q. Walks off without answering lots of times, doesn't he?

Mr. Ryan: I object to that.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: Yes, he does.

Q. (By Mr. Smith): Now, regarding your brother, Herman Pool. He testified that you laid him off about October 1st.

Mr. Petersen: To which we would like a correction. I think the date was October 8th.

Trial Examiner Mouritsen: Well, wait a minute.

Mr. Smith: I thought it was the 3rd.

Trial Examiner Mouritsen: Around that time, it doesn't matter so much. [748]

Q. (By Mr. Smith): I think he testified on October 1st you told him to go on his vacation; is that correct? A. I did.

Q. And he testified that he told you on September 27th, the night after he had been—the mor-

(Testimony of Pete Pool.)

ning after he had been over to El Centro, he had signed an application with the union the night before. Did he tell you that? A. He did.

Q. Now, after he told you that, did you tell either Herman Smith or Mr. Willard what he had said? A. No, I didn't.

Q. Did you tell Mr. Herman Mr. Willard could get plenty of non-union men to operate the plant?

A. I don't have no recollection of it.

Mr. Ryan: Pardon me. Who is this man you are talking about?

Mr. Smith: Herman Pool, his brother.

Q. (By Mr. Smith): Did you tell Herman that Mr. Willard told you there would be no more relatives working at the plant? A. I did.

Mr. Petersen: Let's fix the date.

The Witness: Well, I couldn't say the exact date, though it was in October some time.

Mr. Petersen: Find out whether he was on his vacation.

Q. (By Mr. Smith): Was he on his vacation at the time?

A. Yes, he was on his vacation at the time.

[749]

Q. What did he say?

A. He told me, he said that was all right, he was looking for a job when he found that one.

Q. Did he ever apply for a job after that?

A. No, sir.

Q. Now, the witness Standifer said that you laid

(Testimony of Pete Pool.)

him off on October 3, 1941, at at time when he was painting. Is that correct?

A. That is correct, sir.

Q. He said he was painting on a wall?

A. He were.

Q. State whether or not he had finished the painting that you had instructed him to do.

A. He did, sir.

Q. Did anyone do any more painting on that wall after he left? A. No, sir.

Q. You might tell now what part of the wall you were painting?

A. Well, sir, he was painting around the front end of the engine room, around the time clock.

Q. Had you shown him what part of the wall to paint?

A. No, I only told him to paint the wall up by the time clock.

Q. I see. Did you have any available work for him to do at the time you laid him off? [750]

A. No, sir.

Q. Now, did you have a conversation with Henry Miller some time after he had signed up for the—made application for the union?

A. I did.

Q. When and where was the conversation?

A. The conversation, I think, was made the next day after I talked to Hart, the next morning, in the bathroom. He told me he had joined the union.

Q. Mr. Miller?

(Testimony of Pete Pool.)

A. Mr. Miller did. And I don't know his exact words. I told him I thought it was a good thing, I wouldn't mind joining the union myself. He said being as I was a plant superintendent, why, they wouldn't take me into the union.

Q. Then when you made your list to start the gang in the fall of '41, did you put him on the list to reemploy? A. I did, sir.

Q. Or call back? A. Yes.

Q. And did you, yourself, do anything to try to get him back? A. I did.

Q. What did you do?

A. I phoned his residence.

Q. Who did you talk with? A. His wife.

[751]

Q. What conversation did you have?

A. Well, I phoned her up and asked her for Mr. Miller, and she said he wasn't there, had went to Los Angeles, and I told her I wanted him to go to work. And she said she thought he had already went to work. I told her would she relay the message to him, and she said she would.

Q. Did you ever hear from her or from him after that? A. I did not.

Q. Now, when you made up your list to start, did you pay any attention at all to the fact that those—that some had made application to join the Chauffeurs, Teamsters and Helpers, Local 898, of the A. F. of L.?

Mr. Ryan: I object to that as calling for a self-serving declaration.

(Testimony of Pete Pool.)

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: No, none whatever.

Q. (By Mr. Smith): Did you have any objection if they did join the union, Pete?

A. I did not.

Mr. Ryan: I object to——

Mr. Petersen: May we again have a date fixed for the making up of the list?

Q. (By Mr. Smith): Pete, do you know when you made up the list of the men you were to pick when you started the plant? [752]

A. No, not exactly. It was—I would say sometime between the 15th and the 1st of October. Sometime in that period, in between there, those 15 days.

Mr. Petersen: Of what month, of October? 15th and 30th of October?

The Witness: Between those dates.

Trial Examiner Mouritsen: Do you mean the 15th and 30th or 15th and 1st of October?

The Witness: From the 15th until the 1st of October——

Trial Examiner Mouritsen: 15th of October to the 1st of November, or from the 1st of October to the 15th of October?

The Witness: 15th of October to the 1st of November.

Q. (By Mr. Smith): Now, tell us just exactly how that was done, did you and Mr. Willard get together some place?

(Testimony of Pete Pool.)

A. Well, if I remember right, he called me in the office.

Q. All right. Tell us just exactly what you did and said there.

A. Well, he told me, asked me was I about ready to start up the plant operations, and I told him, no, I hadn't got it ready yet. Well, he said he wanted to start up as soon as we could, that we had to lay some of the men off, and he thought he would call me in and pick the men with me.

Q. All right. Go ahead, tell what you said and what he said.

A. Well, we talked on, and one thing he told me that I shouldn't work none of my relatives there. I couldn't, in other [753] words, he made it very plain that none of my relatives was supposed to be working there. He said it caused ill feelings, he never said why. And he talked over—he asked me did I want some men, did I think that would be a good place for them. I don't remember the men's names exactly; to some men I said, yes. To some I said no. He asked me what men I wanted. I picked some men I wanted, I told him I thought would be good at certain jobs.

Q. Did you write their names down on a piece of paper or anything? A. No, we did not.

Q. You knew them so well you could remember them? A. Yes, sir.

Q. Was there any conversation at all between you and Mr. Willard as to whether any of the men had or had not joined the union?

(Testimony of Pete Pool.)

A. None whatever.

Q. Did he select any names he wanted to come back?

A. Well, I tell you, I couldn't say right off-hand.

Q. Well, you say H. G. Miller was on the list to be called back?

A. I think H. G. Miller was the first man he mentioned.

Q. That he wanted? A. That he wanted.

Q. Well, who selected M. K. Stout? [754]

A. I did.

Q. Who selected Tom Herring?

A. Well, Tom Herring didn't go to work under me.

Q. He wasn't under you? A. No, sir.

Q. Who selected G. P. Drinkard?

A. He wasn't under me—no, wait, I will take that back. I did that.

Q. You selected Drinkard? A. I did.

Mr. Smith: I think those are all the questions I have with this witness.

Mr. Whitelaw: No questions.

Cross Examination

Q. (By Mr. Ryan): Mr. Pool, when you were sitting there in the office with Mr. Willard selecting men to be brought back, what group of men were you considering, what group of men were you picking in your mind as you talked it over?

A. Well, I was picking from a group of men

(Testimony of Pete Pool.)

that the whole group of men had worked there in the spring of 1941.

Q. And could you list them for us?

A. Well,—

Mr. Smith: Give him a list.

The Witness: It has been so long.

Q. (By Mr. Ryan): If you saw a payroll for that time, could [755] you pick them out?

Mr. Smith: I have a list here.

Mr. Ryan: This isn't in evidence, is it?

Mr. Smith: No, it is just a list of names. He could refer to it.

The Witness: Now the question?

Mr. Smith: The witness has never seen that chart there.

Mr. Ryan: I will let him look at a chart. I suppose I better—do you want it marked as an exhibit?

Mr. Smith: That is all right.

(Thereupon the document referred to was marked as Respondent Ice Company's Exhibit 5, for identification.)

Q. (By Mr. Ryan): When you and Mr. Willard were discussing this situation about taking men back with the idea in mind to operate under the electric power, did you take into consideration how many you would need?

A. How many we would need?

Q. Yes. A. Yes, we did.

Q. Not just to get it started, but to operate it after you got it started? A. Yes.

(Testimony of Pete Pool.)

Q. What was the figure you arrived at?

A. Well, the figure we arrived at was seven men.

Q. That is just for these two departments, that doesn't take [756] in drivers and delivery men.

A. I didn't discuss the drivers. I have nothing to do with the drivers.

Q. You can look at this document that has been marked for identification. I will ask you what group of men you were picking from, to name the ones that were in the group that you were actually picking from. Are some on that payroll that were in that group? You can indicate that.

A. The group I was actually picking from was the production end, the engine room crew and the tank crew and the store room crew.

Q. And who were those men? Can you name them? Start in with the engine room crew.

Mr. Smith: You can refer to the list, if you want to.

Trial Examiner Mouritsen: Why don't you give him the ones of the year before that sets them out?

Mr. Smith: That was the list there.

Trial Examiner Mouritsen: I know, but it hasn't it according to departments.

Mr. Ryan: It hasn't them according to department, and it is very confusing.

The Witness: I think I can remember. I will make a stab at it. Starting with the engine room in the spring of 1941, for operators, was Eddie Jones, Henry Miller, Herman Pool, Merl Stout. [757]

(Testimony of Pete Pool.)

Trial Examiner Mouritsen: That is M. K. Stout, isn't it?

The Witness: Yes. The relief operator was Art Standifer. Now, along in the winter of 1941 we made another change in the engine room. I think some new law went into effect, then we put on one more man as operator.

Q. (By Mr. Ryan): When was that?

A. In the winter and spring of 1941, same year, if I remember correctly.

Trial Examiner Mouritsen: That was while you were still operating with Diesel?

The Witness: That is while we were still operating with Diesels, put another man to operate part of the time on Diesels and relief, too, on the can tank.

Mr. Smith: Who was he?

The Witness: Perry Blankenship and Marion Wooldridge was machinist.

Q. (By Mr. Ryan): Wooldridge?

A. Yes, sir. Lester Hart was a machinist. That completes the engine room. The tank crew was George Harlan, Lloyd Gettle, and also Perry Blankenship come in there, split. Also Stanley Harlan, he come in, and Herman Fruhn.

Q. Is that all?

A. That completes it. That completes the tank crew.

Mr. Smith: Please let the record show the witness is doing this from memory, not referring to

(Testimony of Pete Pool.)

any paper, although [758] he has a right to refer to the record.

The Witness: We will go to the storeroom man. Now, those men, I can't remember all of those men because they quit and go. In the storeroom, Simon Hougue was one of the storeroom men, Dick Ireland, Dan O'Neal, Charley Hefner and I think Dub Hefner.

Q. (By Mr. Ryan): How about your brother Bailey Pool, where was he working?

A. He was working in the storeroom; Bailey Pool.

Q. Does that take care of it all?

A. That takes care of about all of the men that had shifts.

Q. That were considered as regular men?

A. Yes, sir.

Q. All right. By the time you got around to meeting with Mr. Willard in the office to decide what men to pick out, Jones had already quit the employ of the company? A. He had.

Q. Wasn't being considered, was he?

A. No, sir.

Q. And Wooldridge, had he not already quit?

A. He had already quit, sir.

Q. So he wasn't being considered?

A. He wasn't being considered.

Q. And S. Harlan. up to the time you—up to this time when you and Mr. Willard were sitting down considering which [759] men to put back, he

(Testimony of Pete Pool.)

had not been, in fact, a regular employee of the company, he had been an extra man?

Trial Examiner Mouritsen: Just a minute. That is one question.

Mr. Smith: Object to that as calling for a conclusion of the witness.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: Well, to the best of my knowledge he had put in about three seasons there.

Q. (By Mr. Ryan): Did Dan O'Neal or D. O'Neal, was he being considered?

A. Yes, sir.

Q. Had he worked as a regular employee before that for any length of time?

A. Well, off and on for about eight or ten years.

Q. Hadn't you fired him several times?

A. No, he had quit.

Q. He had quit several times? A. Yes.

Q. He didn't work any that summer an maintenance work, did he? A. Dan O'Neal?

Q. Yes. A. No, sir.

Q. When had he left the employ of the company? [760]

A. That summer, he left in July.

Q. In July? A. Yes.

Q. Hefner, C. Hefner, when had he left the employ of the company, or had he left the employ of the company by quitting or by being discharged prior to the time that you sat in with Mr. Willard

(Testimony of Pete Pool.)

on this occasion deciding who was to come back?

A. Well, Charley Hefner, I don't know whether he was working for the company at that time or not, in '41, along in the spring of '41. I think March or April, I think he went to driving a truck, delivering White ice, I am not for sure.

Q. How about your brother Bailey Pool, he went into the Army? A. He quit.

Q. When did he quit, Mr Pool?

A. Along in June some time.

Q. Of that year?

A. No, in July some time.

Q. He was out of consideration? A. Yes.

Q. You didn't have to consider him?

A. No.

Trial Examiner Mouritsen: Mr. Pool, when you say White ice, what do you mean, that that goes to the vegetable packing [761] sheds, or that ice that is sold to domestic consumers?

The Witness: That that goes to the packing sheds. White ice is ice that we sell to the packing sheds.

Q. (By Mr. Ryan): Now, this Dub Hefner is also R. S. Hefner?

A. Yes, there are two Hefners.

Q. Brothers? A. They are brothers.

Q. When had R. S. Hefner last worked for the company at the time you were meeting with Mr. Willard in his office, trying to select the men?

A. I think he was still working for the com-

(Testimony of Pete Pool.)

pany, I am not for sure. He left me also in the spring of 1941, went to the front end.

Q. Went where? A. Delivering ice.

Q. Did you consider him then when you were considering who was to go back? A. No.

Q. He wasn't being considered?

A. No, sir.

Q. How about the other Hefner, C. Hefner?

A. Yes, C. Hefner, Charley, I did consider him.

Q. So that left your consideration with Mr. Willard, the group you were considering consisted of Miller, H. G. Miller, and your brother Herman Pool, and M. K. Stout, Art Standifer, [762] Perry Blankenship, L. C. Hart, George Harlan, L. Gettle, S. Harlan, H. Fruhn, D. Ireland, D. O'Neal and C. Hefner, is that right? A. Yes, right.

Q. So you started to operate the plant in the fall about the 29th of October, 1941, or the first of November, when you started up in 1941, after you had gotten the electric equipment, you started up the plant, isn't that right?

A. That is right, started up the last part of October or the first of November.

Q. So far as the two departments are concerned known as the tank room and the storeroom, you had seven employees in that? A. Right.

Q. And that doesn't take into consideration the department known as platform and delivery?

A. No, it does not.

Q. When you started to operate the plant that fall, did that platform and delivery department

(Testimony of Pete Pool.)

start up right away, too, or didn't you have any employees in there?

Mr. Smith: Objected to as not proper cross examination. This witness doesn't know anything about those other departments.

Trial Examiner Mouritsen: The witness can say so. I will overrule the objection.

Mr. Ryan: He testified to it. [763]

Trial Examiner Mouritsen: Answer the question.

The Witness: The question, please?

(The question was read by the reporter.)

The Witness: I didn't have any employees in there, I don't know.

Q. (By Mr. Ryan): Now, of this group we have just identified as a group from which you made your selections in the office with Mr. Willard you selected M. K. Stout as one, didn't you?

A. I did.

Q. And when I say "you," I mean you or Mr. Willard? A. Yes.

Q. And you selected George Harlan?

A. Yes, sir.

Q. L. Gettle? A. Yes, sir.

Q. D. Ireland? A. D.?

Q. R. F. Ireland, or Dick Ireland?

A. Yes, sir, I did.

Q. S. Hogue? A. Yes, sir.

Q. And G. P. Drinkard? A. Yes, sir.

Q. W. T. Morgan? A. Yes, sir. [764]

(Testimony of Pete Pool.)

Mr. Petersen: The last one?

Mr. Ryan: W. T. Morgan.

Q. (By Mr. Ryan): When had he worked for the company last previous to this discussion in Mr. Willard's office?

A. In July, I laid him off in July, 1941, I think.

Q. How long had he been working for the company?

A. For two seasons.

Q. In what department?

A. Storeroom.

Q. Now then, after the selection had been made by you and Mr. Willard, Herman Fruhn, who, up to that time had worked for the company since 1929, was left out as an ice puller while M. K. Stout and S. Hogue and L. Gettle were kept on as ice pullers?

A. Yes.

Q. None of those men had had anywhere as near as much seniority?

A. That is right.

Q. In fact, L. Gettle had not been an ice puller up to that time?

A. Yes, he had.

Trial Examiner Mouritsen: Didn't he work in the storeroom the year before?

The Witness: He did work some in the storeroom the year before. He went from the storeroom to the tank *can* and [765] pulling.

Trial Examiner Mouritsen: When was that?

The Witness: I think he went to the tank room in the spring of 1940.

Trial Examiner Mouritsen: Spring of 1940?

The Witness: Yes, along in March or April, if I am not mistaken.

(Testimony of Pete Pool.)

Trial Examiner Mouritsen: Was that 1940 or 1941 that he did that?

The Witness: Before '41, in the spring.

Q. (By Trial Examiner Mouritsen): Had he worked all during 1941 in the storeroom, is that right?

A. No, he worked on the tank, to the best of my recollection in '41.

Q. Did he start out in the storeroom in 1941?

A. No, sir, started out on the tank in '41.

Q. Perhaps I am not clear. In the 1940-41 season, you know that starts——

A. (Interrupting): He started in the storeroom.

Q. Did he work in the storeroom all during that year? A. No, he didn't.

Q. Did he go into the tank room?

A. Yes, sir.

Q. Do you recall about when he did that?

A. Along in March, I think, April or March.

[766]

Q. On these can pullers do they all operate cranes? A. You mean then or now?

Q. Well, then. A. Yes, operate cranes.

Q. Well, how many shifts did they work?

A. Three shifts.

Q. How many can pullers to a shift?

A. As I say it changed in 1941, I think.

Q. Let's take the 1941 season that began the end of 1940 and ran over into the spring and summer of 1941. That was when you were on Diesel power?

(Testimony of Pete Pool.)

A. Yes.

Q. How many cranes were there?

A. One crane.

Q. Did you have more than one man per shift on a crane?

A. One man to the shift. Three shifts, there were three shifts in 24 hours.

Q. Yes. What confuses me is I see from the payroll that they had five can pullers during January 1941. How could that be when they have only one crane?

A. Well, here it is, see, one man—it takes three men in 24 hours to pull the ice, operate the crane; three men. And under working 40 hours a week, why, it took five men to pull ice a week. So each man could get his 40 hours in.

Q. All right. Where does the sixth man come in? [767]

A. The sixth man on the windup there he was a relief man, I think he only worked a couple or a half a day on a crane, to fill in.

Q. Then he spent the rest of his time in the storeroom?

A. Sometimes the storeroom and sometimes in the engine room, maintenance work.

Q. How many half days did he put in in the can pulling room in the tank room, as a can puller, during the spring and summer of 1941? I am referring to Gettle.

A. Gettle was a steady man. He run a steady shift. He wasn't relief, he had a shift, rotated.

(Testimony of Pete Pool.)

See, the relief man, he works all days, what we call our relief man, he works days, comes on and works all day shift and regular shift man, he rotates, every week, move up a shift every week.

Q. Well, then, did you have six regular can pullers during the spring and summer of 1941?

A. No, five only regular can pullers.

Q. You say Gettle still worked steadily doing that?

A. He did.

Q. Were any of these other five sick?

A. Sick?

Q. Yes. Were they out sick or off for any reason?

A. No, I don't think so.

Q. What had you been doing before Gettle—say, you started there in March, who, if anyone, had been doing that work [768] before that time?

A. Before that time I think Art Standifer had been doing that work.

Q. Mr. Standifer was a regular operator, wasn't he?

A. No, in 1941, he was in the spring of 1941.

Q. It looks, as I understand it, here are the five men who were can pullers during January of 1941?

A. Yes.

Q. I am showing you Respondent Ice Company's Exhibit 1-A. Now, those are five men that would take up your entire shift on a single crane at 40 hours a week, wouldn't they, or would they?

A. Yes, I guess—no, a relief man comes in there somewhere.

Q. When you say that Gettle worked a steady

(Testimony of Pete Pool.)

shift, is that right, or did he just come in occasionally?

A. No, he had a steady shift, he rotated. He worked the same as the other five men, all of them rotated.

Q. Did you increase the number of hours in March, 1941?

A. No, the hours would be the same, to the best of my recollection.

Q. Had you had any relief man before Gettle started to do that in 1941?

A. I had, yes.

Q. Who was that?

A. I couldn't say whether it was Art Standifer—— [769]

Q. Mr. Standifer was regular, wasn't he? He is already on this list, he is one of the five.

A. Or Perry Blankenship.

Q. He is also one of the five?

Mr. Smith: What is the question?

Trial Examiner Mouritsen: Who was the relief man before Gettle, whom he classifies as a relief man?

The Witness: I will have to give it up, I don't know.

Mr. Ryan: Miss Reporter, will you mark this document Board's Exhibit next in order?

(Thereupon the document referred to was marked as Board's Exhibit No. 11, for identification.)

Mr. Ryan: Miss Reporter, will you mark these documents as Board's Exhibits next in order?

(Testimony of Pete Pool.)

(Thereupon the documents referred to were marked as Board's Exhibits 12 and 13, for identification.)

Q. (By Mr. Ryan): This exhibit has already been marked Board's Exhibit 10, which we were speaking about this morning, which is entitled "Employees that began the operations of the plant in the fall of 1940." I now show it to you, Mr. Pool, and ask you whether or not that is a group of employees that started the plant in the fall of 1940?

A. It is to the best of my knowledge.

Mr. Ryan: I offer it in evidence as Board's Exhibit 10.

Trial Examiner Mouritsen: Is there any objection to the offer? [770]

Mr. Whitelaw: No objection.

Mr. Smith: The only thing, Herman Smith has the record, he knows they were on the payroll, caused this to be made. The witness says it is to the best of his knowledge; I suppose it is correct.

Trial Examiner Mouritsen: I think it is better to have Mr. Herman Smith identify them.

Mr. Smith: I think so when we get Herman on. Let me ask Herman, and maybe I can stipulate with you.

Yes, he says that is the payroll.

Mr. Ryan: Then I offer it in evidence as Board's Exhibit 10.

Trial Examiner Mouritsen: Will you stipulate that is the correct payroll for—what is the date?

Mr. Smith: Fall of 1940.

(Testimony of Pete Pool.)

Mr. Ryan: The document reads "Employees that began the operations of the plant in the fall of 1940."

Trial Examiner Mouritsen: Do you stipulate that it is the correct list of such employees?

Mr. Smith: The payroll.

Trial Examiner Mouritsen: I will receive it as Board's Exhibit 10.

(Thereupon the document heretofore marked for identification as Board's Exhibit No. 10, was received in evidence.)

BOARD'S EXHIBIT No. 10

February 11, 1943

Holtville Ice & Cold Storage Co.

Employees that began the operations of the plant
in the Fall of 1940.

Engine Room:

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers:

G. Harlan

S. Hogue

H. Fruhn

A. Standifer

P. Blankenship

(Testimony of Pete Pool.)

Storeroom:

L. Gettle

R. H. Ireland

B. Pool

Platform & Delivery

E. Broderick

T. Herring

G. P. Drinkard

H. C. Fredinburg

Garage Mechanic:

N. Ballard

Mr. Whitelaw: Mr. Examiner, in view of the fact there [771] is contention who are and who aren't employees, wouldn't it be better to stipulate those are the persons shown to be on the payroll as of that date, rather than they were the employees?

Mr. Smith: That is what we stipulated. [772]

Q. Well, you testified on direct examination that there were many times when Mr. Willard would—when Mr. Willard came up to you and you would say something to him and he would turn around and walk away. You didn't think he was mad on those occasions?

A. Well, sir, to tell the truth, most of the time I did. [774]

Cross Examination

Q. (By Mr. Petersen): Was your brother Herman Pool an engineer before you became superintendent? A. Yes, he was.

(Testimony of Pete Pool.)

Q. He had been put on the job by the previous superintendent, as an engineer?

A. That is true.

Q. Did you ever promote your brother?

A. I did not.

Q. Did your brother work a regular shift, the same as the other operating engineers?

A. He did.

Q. Did you give your brother any extra work during the operating season, above the other engineers?

A. No, I didn't.

Q. Now, you stated in your examination that you figured that you could get rid of about seven men, did you, on the changeover from Diesel to electric power, is that substantially correct?

A. No, I think I said that we could start up with seven men.

Q. You could start up with seven men?

A. Yes. [775]

Q. And how many men did you figure it would take to operate due to the changeover?

A. Well,—

Q. What would be the difference in, we will say, putting out the same amount of ice due to the changeover from Diesel to electric equipment?

A. Well, when we changed over to the electric equipment we done away with the Diesel operators.

Q. That is four men, is that right?

A. Yes, and we done away with the mechanics, figured we wouldn't need the mechanics.

Q. That is two men?

A. Yes.

(Testimony of Pete Pool.)

Q. That is six men you figured the changeover would eliminate, is that right?

A. Yes, and here's another question come in there, where we figured we would eliminate some men when we were only working 40 hours a week and they let the men work 48 hours, raised up to eight hours, instead of working 40 hours we worked 48 hours; that done away with some of the relief men.

Q. When was the decision made to work from 40 to 48 hours? A. I don't know, sir.

Q. Who made that decision to change from 40 to 48 hours?

A. Well, Mr. Willard, I think, told me—I asked him about the 40 hours, if I remember correctly, and he said they [776] would work 48 hours.

Q. And your operating schedule——

A. Is 48 hours a week now.

Q. At the time you were ready to commence the 1941-42 season you drew up the basis of the employees you were going to have on the basis of 48 hours a week?

A. No, I think 40 hours.

Q. You drew that up on a basis of a 40 hour week? A. 40 hours. [777]

Q. (By Mr. Peterson): When you went over the list of the employees whom you were going to hire back the next year, and you figured that you could get along with about seven less employees, did you check off the names of the employees who

(Testimony of Pete Pool.)

already were gone when you discussed that question with Mr. Willard?

A. No, I didn't because I wasn't checking over the names, didn't have the names or anything written.

Q. Did you know that there were six or seven men who had already disassociated themselves from the employ of the company?

A. I only knew two men—no, I will take it back; three men. [779]

Q. Who were they?

A. One was Bailey Pool, Marion Wooldridge and Eddie Jones.

Q. You didn't know that S. Harlan was no longer working for the company? A. No.

Q. Or Mr. Hefner? A. No.

Q. Or Mr. Wooldridge?

Trial Examiner Mouritsen: He mentioned Wooldridge.

Q. (By Mr. Petersen): Going over into the platform I believe you stated, on direct testimony, that you asked Mr. Drinkard to be put on the list of employees? A. I did.

Q. Was Drinkard working in your department when you asked that he be put back to work?

A. No, he was not.

Q. He was working on the platform or driving?

A. Driving, he had been driving, I presume.

Q. You asked for him? A. I did.

Q. Were you acquainted with the procedure on the driving platform, yourself? A. No.

(Testimony of Pete Pool.)

Q. Did you know that a Mr. Broderick, who was on the platform, was driving? [780]

A. I just know Broderick as a person when I see him.

Q. Did you know that he had left the company's employ?

Mr. Smith: Object to the question, it assumes facts not in evidence.

Mr. Petersen: All right.

Trial Examiner Mouritsen: Fix the time.

Q. (By Mr. Petersen): Did you know whether Mr. Broderick had left the company's employ previous to October 29, 1941? A. No.

Q. Now, when you stated that Mr. Hogue, Mr. Gettle, Mr. Harlan, Mr. Ireland, Mr. Fruhn and Mr. Blankenship did not work during the entire slack season in 1941 between July and the commencement of operations on October 29, is that right? A. That is right, sir.

Q. (By Mr. Petersen): Mr. Fruhn, Mr. Hart, Mr. H. G. Miller, Mr. Herman T. Pool, and Mr. M. K. Stout all did work during that slack season. is that right? A. Mr. Fruhn didn't.

Q. Mr. Fruhn didn't? A. No.

Q. How about Arthur Standifer?

A. Arthur Standifer did.

Q. He did? A. Yes. [781]

Q. Now, when you met with Mr. Willard to consider who was going to remain in the plant, did you give any consideration to the fact that the last named men, Mr. Hart, Miller, Pool, Standifer,

(Testimony of Pete Pool.)

Stout, had all been working during the changeover?

A. Did I give any——

Q. Yes. A. No, sir.

Q. No consideration to that whatsoever?

A. No, sir.

Q. Then you did recall Mr. Hogue, Mr. Gettle, Mr. Harlan, Mr. Ireland, who weren't working during the change-over, to commence on operations when the plant resumed? A. I did.

Q. Did Mr. Hogue, Mr. Gettle, Mr. Harlan and Mr. Ireland have as much seniority with the company as Mr. Miller, Mr. Hart, Mr. Pool, Mr. Fruhn, Standifer and Stout.

Mr. Smith: Object to the question, it is not only compound——

Trial Examiner Mouritsen: I will sustain it on that ground alone.

Q. (By Mr. Petersen): Did Mr Hogue, Gettle or Harlan or Ireland have as much seniority with the company as Mr. Fruhn? A. They did not.

Q. As Mr. Hart? [782] A. They did not.

Q. As Mr. Miller? A. They did not.

Mr. Smith: That is objected to. I move the answers be stricken for the purpose of an objection, on Miller. Objected to because the evidence has shown that they tried to hire Miller back; he is the one that took a job in Los Angeles.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Petersen): Mr. Herman Pool?

(Testimony of Pete Pool.)

Mr. Smith: It is further objected to on the ground it is compound.

Q. (By Mr. Petersen): Mr. Art Standifer?

Trial Examiner Mouritsen: Wait a minute. I will overrule the objection.

Mr. Whitelaw: Hasn't this all been gone into twice by Mr. Ryan?

Mr. Petersen: No.

Mr. Whitelaw: He went into it in length this morning.

Mr. Petersen: We finally had a witness this morning, Mr. Willard stated he didn't know those things and Mr. Pool and Mr. Smith could testify.

Q. (By Mr. Petersen): Mr. Standifer?

Mr. Smith: Objected to as being compound.

Q. (By Mr. Petersen): Did Mr. Standifer have more seniority [783] than Mr. Hogue, Gettle or Harlan or Ireland? A. He did.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Petersen): Mr. M. K. Stout, did he have more seniority than Hogue, Gettle, Harlan and Ireland? A. Yes, he did.

Q. And how about Mr. George P. Drinkard, did he have more seniority than Hogue, Gettle, Harlan and Ireland?

A. He did; Pete Drinkard did.

Q. Now, you stated that Mr. Hogue, Gettle, Harlan, Ireland, Fruhn and Blankenship were laid off during the spring and summer season of 1941?

A. They were.

(Testimony of Pete Pool.)

Q. Was that done before Mr. Willard went on his vacation or while he was on his vacation?

A. It was done after he went on his vacation, to my best recollection.

Q. Now, with the repair work that is being done at the plant at the present time, how do you do the sheet metal work repair, if there is any?

A. There isn't any sheet metal work now.

Q. Do you do any new construction on sheet metal work that was formerly done at the plant?

A. Not to my knowledge.

Q. Who runs the machine shop at the plant now? [784]

A. We haven't any machine shop.

Q. You don't do any more machine work down at the plant at all?

A. Well, we do a little welding. I do a little welding; I do that myself.

Q. What about other machine work, such as making crusher teeth?

A. We buy those already made now.

Q. You send any work out to a machine shop now?

Mr. Whitelaw: As distinguished from electrical stuff?

Q. (By Mr. Petersen): As distinguished from electrical?

A. We sent one job out in '41. Is that what you are referring to?

Q. Yes. A. 1941.

Q. 1941. And thereafter——

(Testimony of Pete Pool.)

A. We sent one job out to a machine shop.

Q. Who does the repair work now on the dynamo, if you have any? Do you have any dynamos?

A. We have no dynamos.

Q. On the ice compressors? A. I did.

Q. Pumps? A. Pump work?

Q. Yes. [785] A. I do it.

Q. I believe you testified that you did some work in the packing sheds. How much work do you do in the packing sheds on the conveyor equipment in the sheds?

Trial Examiner Mouritsen: How much of your time does it take, as a rule, to do that work?

The Witness: You mean over the period of a season?

Q. (By Mr. Petersen): Over a season.

Trial Examiner Mouritsen: Yes.

The Witness: I would say approximately an hour a week.

Q. (By Mr. Petersen): Now, you said you talked to Mr. Willard about the union. Was that the day after the boys joined the union, or was it later than that?

A. Well, it was later than that, I presume, I talked to him.

Q. Did you converse with your brother, Herman Pool, about going to the union meeting?

A. No, sir.

Q. Did you talk to Mr. Willard or Mr. Herman Smith concerning the formation of an employees association at the plant, Holtville Ice Company?

(Testimony of Pete Pool.)

A. No, sir.

Q. Did you talk to any of the employees at all about the employees association?

A. No, sir. [786]

Q. I believe you testified that you phoned Mr. Miller he could come back? A. I did.

Q. Did anyone request you to phone Mr. Miller to come back? A. No, sir.

Q. Did you know that Mr. Miller had already gone to Los Angeles when you phoned him?

A. I did not.

Q. Did you know anything about an employees association being formed down at the plant?

A. Yes, hearsay, I did.

Q. About what time did you first hear about that?

A. Oh, along in September, I think it was.

Q. Did Mr. Osborne ever contact you?

A. No, sir.

Q. I believe you testified that your next year's employment list for the '41-42 season was drawn up sometime between October 15th and the 1st of November, is that right?

A. The next year's season?

Q. For the next year's season, for the '41-42 season that you met with Mr. Willard and drew up the employment list?

A. I met with him, we didn't draw up anything; I talked to him.

Q. You talked to him.

A. We talked it over. [787]

(Testimony of Pete Pool.)

Q. That was between October 15th and November 1st? A. Yes, sir.

Mr. Petersen: That is all.

Cross Examination

Q. (By Mr. Yeager): Mr. Pool, this discussion you heard about an employee's union that you said took place in September, did you hear that before Mr. Willard came back from his vacation or afterward?

A. Well, to the best of my knowledge, yes.

Q. Which? A. Before.

Q. How long before, do you remember, about?

A. Oh, I would say approximately seven or eight days.

Q. And do you remember who, among the men, you heard discuss it out there? A. I do not.

Q. It was the men in the plant, was it, the employees of the Holtville Ice Company?

A. That is right.

Mr. Yeager: That is all.

Q. (By Trial Examiner Mouritsen): Mr. Pool, what was the kind of repair work they were doing in the summer of 1941, can you tell me just what kind of work it was?

A. Well, most of the work they were doing was working on conveyors in the ice room and working on the icing machines. [788]

Q. That work continued pretty much up until the beginning of October, is that right?

A. That is right, yes, sir.

(Testimony of Pete Pool.)

Q. Was any particular skill required in that work? A. No, sir.

Q. I think when Mr. Willard left he told you to let the men you didn't want go, is that correct?

A. That is correct, sir.

Q. What was the basis for your selection of the men who continued to do this work throughout the summer and those that you let go?

A. Well, the ones that I thought could do that particular job the best, is the ones I kept.

Q. This job didn't require any particular skill, is that right?

A. That is right, sir.

Q. Were they the ones you considered the better workers?

A. Yes, sir, on that certain job. [789]

Cross Examination

Q. (By Mr. Petersen): I believe you stated you had heard some talk about an employees association being formed prior to Mr. Willard's return from his vacation, is that right? A. No, before.

Q. Before Mr. Willard came back from his vacation? A. Yes, sir.

Q. When did you first hear about the Teamsters Union attempting to organize the men, was that before or after Mr. Willard came back from his vacation? A. Before.

Q. That was before? [791] A. Yes, sir.

Q. What did you hear in that regard?

A. Well, a whole lot of it, it was hearsay, some

(Testimony of Pete Pool.)

of the men told me they had joined the union and some of the men I asked them.

Q. Did you hear the testimony here that Mr. Willard stated he came about September 20th, and did you heard Mr. Willard testify to that effect?

A. I think I did.

Q. Did you hear the testimony of other witnesses that they joined the union about September 26, 1941?

Mr. Whitelaw: You mean they made application?

Q. (By Mr. Petersen): Made application.

Mr. Whitelaw: All right.

The Witness: I did.

Q. (By Mr. Petersen): Did they make application after Mr. Willard had actually returned?

A. The time the men told me that they made applications, I don't know what time they made them, it was before Mr. Willard came back, before I seen Mr. Willard.

Q. I have already asked you whether—when Mr. Willard came back, did you tell Mr. Willard there was some talk around the plant of forming an employees association?

A. No, I didn't tell him.

Mr. Petersen: That is all. [792]

Cross Examination

Q. (By Mr. Ryan): But you did tell *them* there was some organization among the men by the Teamsters, some union activity among the men?

A. Yes, I told him I thought the plant had went union.

(Testimony of Pete Pool.)

Q. And did you have in mind at that time this making of application for membership in the Teamsters Union? A. Myself?

Q. Yes.

A. No, not at that time I didn't, I found out I couldn't join.

Q. I don't mean your joining, Mr. Pool. I mean the other men that you either heard about or talked to directly. The other employees. You were talking to Mr. Willard, were you, basing what you were telling Mr. Willard on what you had found out from the other employees about joining the A. F. of L.? Telling him information you had gotten by hearing about the men joining the A. F. of L.?

A. No, the only thing I told him I thought it all went union.

Q. What did you base that on?

A. Just on that.

Q. On what?

A. That the plant went union, I thought I would tell him that the plant went union, maybe he would talk it over with me.

Trial Examiner Mouritsen: Why? In other words, had [793] these men told you they had joined the union before you told Mr. Willard that you thought it had gone union?

The Witness: Yes, they had told me before I told Mr. Willard. [794]

PROCEEDINGS

Trial Examiner Mouritsen: The hearing will be in session.

Mr. Smith: The respondent ice company will now call Herman Smith as its next witness.

HERMAN P. SMITH

called as a witness by and on behalf of the Respondent Holtville Ice and Cold Storage Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Smith): You may state your full name, please. A. Herman P. Smith.

Q. What is your business or occupation?

A. Bookkeeper.

Q. For whom?

A. The Holtville Ice and Cold Storage Company.

Q. How long have you worked for the Holtville Ice and Cold Storage Company, Mr. Smith?

A. Since May, 1927.

Q. Have you been in the office all the time?

A. Well, the first year I was in the office part of the year, and the balance of the year I was not. Since that time I have been in the office.

Q. Who is the office manager?

A. I am as much as there is any.

Q. Are all of the books and records under your direct super- [799] vision and control?

A. That is right.

Q. Including payroll records?

A. That is right.

(Testimony of Herman P. Smith.)

Q. And time records? A. That is right.

Q. Do you employ and discharge?

A. I do those working under me in the office and taking care of the clear ice on the platform.

Q. Mr. Smith, going to the witness Le Roy Davis, did he work under you for some time?

A. He did.

Q. Just approximately how long did he assist you with the office work?

A. I would say six or seven years.

Q. Now, just tell the Board briefly what he did the last few years he worked.

A. Well, his principal job was delivery foreman, taking care of the delivery of the vegetable ice, and during the off season, that is the season between vegetable ice sales, he spent all of his time in the main office doing clerical work and oh, I think, he waited on the platform a little—filled in occasionally on the clear ice platform, making sales.

That wasn't his regular job, but I might say that there is some switching back and forth between the men that made [800] the clear ice sales over the platform and the men that worked in the office.

In other words, inasmuch as there were not enough sales to keep a man—that is for the last two or three years, not being enough sales to keep a man busy out on the platform continuously, we would work him in some way in the office.

He would do miscellaneous clerical work, just in a small way.

(Testimony of Herman P. Smith.)

Q. As I understand the physical setup of the plant, the platform from which clear ice sales are made is directly attached to the office, or the office is right off of said platform?

A. That is right. The cash register, for example, that the sales are registered on is in the main office.

Q. In other words, a man could sit in the office and could see a car drive up and could step out and wait on it? A. That is right.

Q. And about how many feet is it from the office door to the platform from where the clear ice is sold?

A. The platform extends up to the office door.

Q. So as I understand it, he would sit in the office and if someone drove up, he would wait on them occasionally? A. That is right.

Q. Now, just what did he do during the entire shipping [801] season—that is, from the latter part of December to some time in July, as long as you were serving the packing sheds with vegetable ice? Just tell exactly the day's routine.

A. In any particular season?

Q. No, no.

A. We have a small office in connection with our vegetable ice delivery platform. There is a phone in this office and Mr. Davis' duties were to answer the phone in that particular office.

He would write up the invoice, the sales ticket for the ice that is to be delivered, and he was in charge

(Testimony of Herman P. Smith.)

of getting this ice delivered—he had charge of the drivers.

Q. You mean he would tell a driver where to take a load of ice? A. Yes, sir.

Q. And how much to take?

A. That is right.

Q. Now, this office you speak of, is that on the same platform where the clear ice is sold?

A. No, it is at a different side of the platform.

Q. And was there any work in that little office on the vegetable ice platform, except during the vegetable shipping season? A. There was not.

Q. And so you say in former years you gave him what you [802] could to do in the way of clerical work around the office for five or six months of the year? A. That is right.

Q. Now, did you and Mr. Willard ever discuss—strike that.

He testified that he worked on an hourly basis up to a certain date and then he went on a monthly rate. Do you recall that? A. I do.

Q. And who, if anyone, suggested that he go on a monthly basis instead of an hourly basis?

A. Mr. Davis.

Q. Who did he suggest it to? A. To me.

Q. Do you recall about when that was?

A. I think it was at the beginning of 1939-1940 shipping season, or vegetable season.

Q. Can you tell us the substance of the conversation?

(Testimony of Herman P. Smith.)

A. Well, Roy was—we left it up to him to look after getting it——

Q. Give us the substance of the conversation—what he said and what you said.

A. Well, he said that inasmuch as he was required to be, or, inasmuch as he was responsible for seeing that the vegetable ice was delivered, that it required him being subject [803] to duty or subject to work over rather a long day; that it would be better if he was paid on a monthly basis entirely rather than being paid as he had been formerly paid on—pardon me a minute—it would be better if he was paid a flat monthly rate at a higher rate of pay per month than he had been formerly paid, and in addition receiving extra compensation for hours over the regular work day.

He said that it made it a little difficult to just keep track of the hours that he actually was working. For example, he took care of his shopping during the day. He would go uptown during a slack period and maybe buy his groceries or go up to the house and do some errands if it was necessary, during the day, and he said it was rather difficult to keep track of just what time that he was actually working for the company and what time that he was doing work for himself, so by changing the basic monthly rate of pay and doing away with some of special overtime, it would simplify matters.

Q. All right. Now, who, if anyone, suggested what monthly salary he should receive?

A. I don't recollect.

(Testimony of Herman P. Smith.)

Q. All right. If you don't remember, we will pass that.

Was there anything said by him or by you about the length of time that he would hold this job at the time he was put on monthly pay?

A. No, not to my knowledge. [804]

Q. I believe Mr. Davis testified in substance that it was understood, at least by himself, that if he went on this monthly job that he would hold it through the slack season and he would handle whatever there was to do in the busy season.

Was there anything said about that between you and him?

A. No mention that I have any recollection of.

Q. Now, he attended to the delivery platform then, from which vegetable ice was shipped, up until July of 1941, did he? A. Correct, yes.

Q. Then *what he* do in the summer after you stopped hauling vegetable ice, between then and October?

A. He did about the same that he had done in previous years.

There was a little extra correspondence at that particular time in connection with the purchase of materials and equipment used in making the change-over in the plant, and we had, in disposing of the equipment—some of the material that we had, some work.

Q. Then you are the one that laid him off, were you not? A. That is right.

Q. Do you know what date that was?

(Testimony of Herman P. Smith.)

A. It was on a Sunday during the latter part of October. I believe it was the 19th or thereabouts, of October. It [805] was Sunday. It might not have been on a Sunday, but it was close to the 19th of October.

Q. All right. What did you say to him and what did he say to you at that time?

A. Well, I told him that it looked like he would have to take off more—to be laid off—have to take off for a while. I told him that things were getting pretty slack.

If I remember correctly, I explained to him that this had been developing over the last two or three years; that our clear ice volume had been dwindling and it had gotten to the point that we were going to have to make some adjustments in order to cut down on expenses; that the income from our clear ice sales didn't justify the expense.

Q. Well, did you say to him—just tell everything that you said to him that you now recall.

A. I told Roy at that time that to me it didn't look like there was much future there in the office. In other words, I had about the only, you might say, good job there in the office and I thought it would be, since there was quite a pick-up over the country in the demand for labor, and I thought it was a good time for a person to get out and make a change, and I mentioned to Roy that he was getting to the age it would be more difficult from then on to make a change, to get work elsewhere, and that that was a good time, and that it would be my personal sugges-

(Testimony of Herman P. Smith.)

tion to him that if he could [806] get in some place else that would assure him more steady work, it looked like from there on out it would be just a seasonal job—just during the vegetable ice season.

Q. Right there, did you tell him whether he could or could not return at the beginning of the vegetable ice season?

A. I told him there wouldn't be any work until after the vegetable season started until he would take over the delivery of the vegetable ice, until that time came, when we would have to have someone take over the delivery of the vegetable ice.

Mr. Petersen: May we ask when—the witness is answering a question and still talking. Counsel, let him fully answer and not say “right there” and ask another question.

Trial Examiner Mouritsen: Come on, gentlemen, let's go along.

Q. (By Mr. Smith): Well, what did he say to all that that you told him?

A. Well, Roy kind of flared up.

Mr. Ryan: I object to that conclusion—the conclusion that he “flared up.”

Trial Examiner Mouritsen: Tell us what he said.

The Witness: He said that he had thought this would come. He said that he had joined the Teamsters Union and that he figured he would be laid off.

Q. (By Mr. Smith): What did you say? [807]

A. I told him, “Roy, that is the first time that I knew that you were a member of the Teamsters

(Testimony of Herman P. Smith.)

Union or had heard that you were a member of the Teamsters Union.”

He went ahead and said that he would—he didn’t know just what he would do, whether he would apply for work elsewhere or not. He said he would think it over. That was the statement he made to me, so I told him in order to tide him over while he was seeking work elsewhere, if he decided to, I would pay him up until the first of November.

Q. Did you do that?

A. I did. And I believe he said—well, he said—I think I mentioned one or two possibilities where he could get work, and he made the remark he thought he would follow that up, so I went ahead and issued him a check up to the first of November.

Q. Now, Mr. Smith, had you had any conversation with Mr. Willard any months prior to laying Roy Davis off regarding the continuation of his services?

A. I remember one time in particular—that was before Mr. Willard left for his vacation in 1941, along toward the end of the vegetable shipping season, that there was a little discussion about our operations for the summer, and Mr. Willard said that he felt that there was too much overhead in connection with our clear ice sales—too much expense there in the office, and he asked me if I felt that it was [808] necessary that I keep Roy during the summer months, and I told him I thought by simplifying our procedure there in the office a little I could handle it without Roy’s help.

(Testimony of Herman P. Smith.)

So, he says, "Well, I think you had better let him go—lay him off."

Q. Yes.

A. When the vegetable ice shipping was over with.

Q. And was Mr. Willard present at the Holtville Ice and Cold Storage Company when the vegetable ice season was finished in July of 1941?

A. I don't recollect [809]

Q. Well, after that discussion that you have testified to about having with Mr. Willard before Mr. Willard went on his vacation, I will ask you if you had another conversation with Mr. Willard regarding whether you would or would not keep Roy Davis after Mr. Willard returned in the fall?

A. I did.

Q. State about when and where that conversation was.

A. I believe it was around in the first part of October— [810] possibly around the middle of October.

Q. Very well. State what you said and what Mr. Willard said regarding that.

A. Mr. Willard came to the office one afternoon. I believe he had been out in the plant. He came to the office and said to me, "Herman, I thought you were going to let Roy go when the vegetable ice shipping season was over with."

I don't know as I made any particular reply. Then he said, "There is no work for him around here, is there?" I don't remember particularly what my reply was.

(Testimony of Herman P. Smith.)

I believe he asked me pointblank why it was I hadn't laid him off at the end of the 1941 vegetable shipping season, and I wound up by saying that I guessed it was because I lost heart.

Q. Were you friendly with Davis and his family?
A. Yes, I was.

Q. You liked him and liked to work with him, did you?
A. That is right.

Q. And his work was satisfactory at all times, was it?
A. That is right.

Q. Well, had you heard from any source at the time you laid him off, Herman, that he had joined the union, or made application to join the union?

A. No.

Q. Now, did you lay off any of these other men that are [811] named in the complaint?

A. No. They weren't—well, with the exception of possibly Henry Fredenburg. He had put in a little time now and then in connection with the sale of ice refrigerators and possibly he had pinch-hit on the platform making clear ice sales, and I believe the question was asked of me if I had any more of that kind of work for him, and I told him that the season was over with and that I didn't.

Q. When was that?

A. Oh, the latter part of October. I don't remember the exact date. That was the customary time.

Q. Did any of the men named in the complaint every apply to you for reinstatement?

A. Yes.

(Testimony of Herman P. Smith.)

Q. Which one or ones?

A. Herman Fruhn.

Q. When did he come to you?

A. It was around Christmas of 1941.

Q. All right, tell what he said and what you said, please.

A. He came into the office—now, I should go back a day or two. I had seen him up at the grocery store a day or two before, and Herman asked about work at the plant. He asked me about it. Well, since it wasn't my job to hire help in the plant I couldn't give him any definite reply, but I told him that I knew we were going to be putting on help and I [812] didn't see any reason why, if he wanted to work at the work we had for him, any reason why he couldn't work, and I would ask Mr. Willard about it. So, I asked Mr. Willard about it and Herman came down on this particular day—came into the office.

Q. When you asked Mr. Willard, tell what you said to Mr. Willard and what he said to you.

A. I asked Mr. Willard, I told him that Herman had mentioned to me about going to work and asked if there was any objection to putting Herman to work, and he says, "Well, we don't need him, do we?"

I said that, "We are putting on some men in the storage."

"Well," he says, "I don't have any objection to him working there but I don't want him out there fooling around with that crane."

(Testimony of Herman P. Smith.)

Q. Was there anything more to the conversation?
A. That was all that was said.

Q. All right. Then what next happened regarding Herman Fruhn?

A. Then Herman, as I previously stated, came to the office as a result of this conference—of our meeting that we had had uptown, and I told him that I had talked with Mr. Willard and had asked if he needed anyone out there—I asked Pete if he needed anyone out there, and I told him that Pete said that he did and to go out and see Pete—I thought he could [813] go to work.

Q. Did he go to work?
A. He did.

Q. What date was that that he went to work?

A. I believe he worked the 28th—I believe he went to work the 28th or the 29th of December. It was right at the very end of December.

Q. How long did he work?

A. He worked one shift. I don't know whether he worked any more than the one shift or not, but it was only one or two shifts.

Q. And did he say anything to you when he left?

A. I believe I saw him uptown the next day or two, up to the grocery store again, and he told me that—he said that he couldn't take it. He even told me that on this one shift he had to get his boy to come down and help him out handling the ice—taking care of the ice that was being stored.

Q. Well, he voluntarily left then, did he?

A. That is right.

(Testimony of Herman P. Smith.)

Mr. Ryan: I object to that.

The Witness: And he came in a day or so——

Trial Examiner Mouritsen: Overruled.

The Witness: Came in a day or two later after his pay check, which was paid him, of course. I believe he said, "I am not as young as I used to be and I can't do that kind [814] of work.

Q. (By Mr. Smith): Which is the less desirable job from the standpoint of the workmen there in the plant, Mr. Smith?

A. Working in the storage. That is in the vegetable ice storage, either putting the ice in or taking it out—taking it out is the most undesirable.

Q. Just tell what the operation is when it is put in there.

A. We have a large room. The ice comes into this room on a conveyor and it is stored—tiered.

Q. Well, does the conveyor carry it—how close to where it is to be placed does the conveyor take it?

A. Well, under our setup for the last five years we have one conveyor chute that brings the ice—they arrange the chutes so the ice slides by gravity within probably 10 or 15 feet of where it is to be stored. Of course, it has to be placed as the layers are put in.

Q. Is there any lifting to be done by the men in the store room? A. No.

Q. How do they move it in place?

A. They slide it. It is slid over on the first layer—it is slid on the floor and then on successive layers of ice.

(Testimony of Herman P. Smith.)

Q. How do they take a hold of it—do they use tongs or [815] poles?

A. They have ice tongs.

Q. And pull it?

A. That is right. They pull it to place.

Q. Now, Herman, were there any of the other of the men named in the complaint—did any of them apply to you for reinstatement—

The Witness: Will you read the question?

(Question read.)

Q. (By Mr. Smith): Those who are named in the complaint.

A. Will you name those that are named in the complaint?

Q. Yes. Arthur Standifer—did he ever apply to you for reinstatement? A. He did not.

Q. Lester C. Hart? A. He did not.

Q. L. H. Davis? A. He did not.

Q. H. C. Fredenburg? A. I believe—

Q. You have testified to that.

A. I laid him off. He never applied after that for work. Pardon me, he did too. He asked me—although the white ice delivery men were hired by the white ice delivery foreman, he asked me the question if he was going to get to haul [816] white ice inasmuch as at that particular time we weren't in our vegetable ice season so we didn't have any one in charge of that end of the business. I told him that I didn't—I didn't know—we hadn't come to that time and I didn't know who would be the

(Testimony of Herman P. Smith.)

one that would be put on; Mr. Willard was the one at that time that was really the last word or that was in position to say whether a man might or might not be put on during the vegetable ice season.

Q. Was that the only form of application that he ever made to you, asked you if he would be put one?

A. That is right.

Q. How about Perry T. Blankenship?

A. No, he never applied for work.

Q. Herman T. Pool? A. No.

Q. And the only other one is Herman Fruhn. You have already testified regarding him?

A. He did.

Q. Now, Mr. Smith, I will ask the reporter to mark a paper as Respondent Ice Company Exhibit 6 for identification.

(The document referred to was marked as Respondent Holtville Ice and Cold Storage Company, Exhibit No. 6 for identification.)

Q. (By Mr. Smith): Now, showing you Respondent ice company Exhibit 6 for identification, Mr. Smith, I will ask you if [817] you prepared the original chart of which this is a copy, from the books and records of your company, or caused it to be prepared under your supervision and direction.

(Handing exhibit to the witness.)

A. Well, as near as I can identify this, without checking back against my records—

Q. Well, didn't you look at it yesterday to see whether it was correct?

(Testimony of Herman P. Smith.)

A. Yes, yes, I did. I check this. Here is my check mark on it.

Q. Was that made then under your supervision and direction? A. It was.

Q. Now, on the top of the sheet it says, "Number of Days Worked" and then it says "Pay Period Ending June 15" in one column, and "June 30" in the second column, and up above the word "June" is the figure "1941" and then as the sheet goes along it covers the pay period ending July 15, July 31, August 15, August 31, September 15, September 30, October 15, and October 31. And over in the left-hand column is a list of names of employees.

Now, regarding that list of names, Mr. Smith, does that include all of the employees of the plant, or just those in the production and delivery end of it? A. (No answer)

Mr. Smith: I will strike that out. [818]

Q. (By Mr. Smith): Does that list include any superintendents or office help?

A. No, other than Roy Davis' name appears at the bottom here.

Q. Now, take the first name as an example, H. G. Miller, for instance, and that shows 11 under June 15. What does that mean?

A. Represents the days worked during that pay period—during the pay period from June 1 to June 15, inclusive.

Q. All right, then it shows— A. 1941.

Q. Under June 30 I suppose that shows the num-

(Testimony of Herman P. Smith.)

ber of days he worked from June 15 to June 30, is that right?

A. June 16 to June 30, inclusive, correct.

Q. Then under the pay period of September 30 there appears two letters, T. O. A. Yes.

Q. And the first name that that appears for is that of Herman Fruhn? A. Right.

Q. Now, what does that "T. O." mean?

A. Temporarily off.

Q. Now, was Herman Fruhn temporarily off at that time?

A. He was, according to my understanding.

Q. In other words, you had a place for him in the store [819] room if he wanted it, is that right?

A. That is right.

Q. (By Mr. Smith): In other words, Mr. Smith, those names [825] which appear on the left-hand column and under the date of September 30, which you have indicated by a "T. O." which means "temporarily off," had they all worked for the company prior to September 30 in the preceding vegetable shipping season? A. They had.

Q. And did they all work in the succeeding vegetable shipping season? A. They did.

Mr. Smith: I will offer the exhibit as Respondent ice company's next exhibit.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Ryan: I will not object to it for what it is worth; I don't think it is worth very much. I do object to it—I do object to the "T. O." as stating a conclusion. All that is obviously a conclusion.

(Testimony of Herman P. Smith.)

Mr. Smith: Well, he has explained what he meant by it.

Trial Examiner Mouritsen: As I understand it, Mr. Smith, the "T. O." means that they did not work during that period but they at some later period again worked for the company, is that right?

The Witness: They worked during our next manufacturing and shipping season.

Trial Examiner Mouritsen: And that would be anywhere from October 29, 1941 up through or to July, 1942? [826]

The Witness: That is right.

Trial Examiner Mouritsen: And if they worked any time during that period I specified, then they are designated "Temporarily Off" here, is that right?

The Witness: Will you read the question?

(Question read.)

The Witness: What do you mean by that time?

Trial Examiner Mouritsen: The period from, beginning October 29, 1941 and extending up to July, 1942.

The Witness: Correct.

Trial Examiner Mouritsen: Because I note there is no indication upon this exhibit that the men worked after September 30th and before the pay period ending October 31, 1941. Do you understand that?

The Witness: That is right. Well, this took our 1941 season up to the end—up to the start of the 1941-1942 season. In other words, this took our

(Testimony of Herman P. Smith.)

1940-'41 season up to the start of the 1941-'42 season.

Q. (By Mr. Smith): In other words, Mr. Smith, to carry the chart out farther, as you have explained it, you could put the T. O.'s for the period October 15 and October 31 just as well as September 30th?

A. That is right, and into November and to whatever time they were put back on the payroll.

Q. In other words, you claim those same men were temporarily [827] off on October 15 and also on October 31 that you have indicated as being "temporarily off" on September 30th.

A. That is right—right on through until their name appears again on the payroll.

Trial Examiner Mouritsen: That would not be true as of the pay period ending October 31st because a number of them worked several days.

Mr. Smith: Yes, yes.

The Witness: I said up until the time their names appeared on the payroll and these men's names appeared on the payroll at that particular time.

Trial Examiner Mouritsen: I see. Is there any objection to the offer?

Mr. Ryan: Other than I have indicated, no.

Trial Examiner Mouritsen: I shall receive the exhibit as respondent ice company's Exhibit No. 6.

(Thereupon the document heretofore marked for identification was received in evidence and marked as Respondent Holtville Ice and Cold Storage Company Exhibit No. 6.)

(Testimony of Herman P. Smith.)

RESPONDENT ICE COMPANY EXHIBIT No. 6

Holtville Ice & Cold Storage Co.

January 25, 1943

NUMBER OF DAYS WORKED

Name	1941		1941		1941		1941		1941	
	June 15	June 30	July 15	July 31	Aug. 15	Aug. 31	Sept. 15	Sept. 30	Oct. 15	Oct. 31
Pay period ending.....	15	30	15	31	15	31	15	30	15	31
H. G. Miller	11	11	10	12	11	10	11	11		
M. K. Stout	11	9	12	12	11	11	5	7	8	13
H. T. Pool	11	12	11	12	11	12	11	12		
M. Wooldridge	10	11	11	12	4					
L. C. Hart	10	10	11	12	11	10	11	11		
A. Standifer	11	10	12	12	11	10	2	6	3	
H. Fruhn	10	12	1	Va				T.O.		
G. Harlan	11	9	7	16	15	16	9	3	9	
P. T. Blankenship	10	11	7	Va				1		
D. O'Neal	10	13	2					T.O.		
R. H. Ireland	11	11	7	Va				T.O.	3	
B. Pool	11	12	6					T.O.		
Lloyd Gettle	12	9	2	3				T.O.	2	
Simon Hogue	5	15	4	Va				T.O.	3	
S. Harlan	11	10	1					T.O.		
Chas. Hefner	12	13	7					T.O.		
W. T. Morgan	14	11	5					T.O.		2
W. C. Hefner	14	6						T.O.		

(Testimony of Herman P. Smith.)

Number of Days Worked—(Continued))									
Name	1941		1941		1941		1941		1941
	June	July	July	Aug.	Aug.	Sept.	Sept.	Oct.	
Pay period ending.....	15	30	15	31	15	31	15	30	Oct. 31
Alton O'Neal	12								
Marland Marshall	10	9							
L. R. O'Neal	12	14	1						
Ray Adcock	8	15	4						
James Anthony	6								
Tom Herring	15	15	15	16	15	9	15	15	12
G. P. Drinkard	10	11		12	12	15	13	7	8
H. C. Fredinburg	12	7	2	9	8	12	7	6	1
Jess Cardwell	6	3			Va			12	
Donald Woodridge	13	14							
Jack Johnson	11	12	3	1				T.O.	
Alfred Brown	10	7							
Gilbert Cardwell	4								
N. Ballard	12	13		15	13	3	14	13	14
S. P. Smyser						1	5		
William Hulme				12	12	10	8	4	
J. E. Clifton				14	13	14	12	12	12
C. H. Johnston				13	13	15	12	12	12
J. C. Oliver				13	13	13	12	12	7
Roy Davis	14	12	10	13	13	11	11	10	2

(Testimony of Herman P. Smith.)

Q. (By Mr. Smith): Now, Mr. Smith, I will show you the respondent ice company's Exhibit 5 for identification, and I might read it for the benefit of counsel.

Trial Examiner Mouritsen: Give him a copy of it.

(Document handed to Mr. Ryan.) [828]

Q. (By Mr. Smith): What do those X's in parenthesis after the several names in Column 1 indicate?

A. Those were men that made application—correction. Those were employees that made application to join the Teamsters Union and continued as employees after September 26, 1941. [832]

Trial Examiner Mouritsen: Does this document, Mr. Smith, show the names of all employees who worked during the 1940-'41 season?

The Witness: No, it just shows that that—

Trial Examiner Mouritsen: That is sufficient. Does it contain the names of all employees who worked during the [834] 1941-'42 season?

The Witness: It does not. It shows the carry-over.

Mr. Smith: I might state that I can go through the list and take each name and prove the fact as shown on this chart with each name. It would be very tedious and when you got through with it you would get the same result that you have here.

This is a summary that we spent time to get up to assist the Board in gathering the facts for what they are worth.

(Testimony of Herman P. Smith.)

Now, if you will read it carefully it shows in each column what it purports to show. For instance, Column 1——

Trial Examiner Mouritsen: I think, as you say, it sets out the information it purports to show.

Mr. Smith: It doesn't mislead anyone.

Column 1 only intends to show those who were actually working or on vacation, or those that were put back later as of September 26.

Trial Examiner Mouritsen: I will overrule the objection and receive it in evidence.

(Thereupon the document referred to was received in evidence and marked Respondent Holtville Ice and Cold Storage Company Exhibit No. 5.)

(Testimony of Herman P. Smith.)

RESPONDENT ICE COMPANY

EXHIBIT No. 5

EMPLOYMENT RECORD

HOLTVILLE ICE & COLD STORAGE COMPANY

Showing: Column I as of September 26, 1941, which includes those on vacation or temporarily off because of slack: Column II, record of same employees who worked in the 1940-41 ice season; Column III, record of same employees who continued to work in the 1941-42 ice season.

Note: There were also additional employees in the 1941-42 season. This record was made to show only the record of old employees who worked both before and after the installation of the electric power in September of 1941.

Column I	Column II	Column III
Employees as of Sept. 26, 1941	Employees who worked 1940-41 ice season	Employees who worked 1941-42 ice season
H. G. Miller (X)	X	Was requested to return
M. K. Stout (X)	X	X
H. T. Pool	X	
L. C. Hart	X	
A. Standifer	X	
H. Fruhn (X)	X	X
Geo. Harlan	X	X
P. T. Blankenship	X	
Dan O'Neal	X	X
Bailey Pool	X	
R. H. Ireland (X)	X	X
Lloyd Gettle	X	X
Simon Hogue	X	X
Stanley Harlan (Army)	X	X
Chas. Hefner	X	X
W. T. Morgan	X	X
W. C. Hefner	X	X
Alton O'Neal	X	X
Tom Herring (X)	X	X

(Testimony of Herman P. Smith.)

Column I Employees as of Sept. 26, 1941	Column II Employees who worked 1940-41 ice season	Column III Employees who worked 1941-42 ice season
G. P. Drinkard (X)	X	X
H. C. Fredinburg	X	
Jess Cardwell	X	X
Jack Johnson	X	X
N. Ballard	X	X
J. E. Clifton	X	X
C. H. Johnston	X	X
J. C. Oliver	X	X
Roy Davis	X	
<hr/> Total Column I: 28	<hr/> Total Column II: 28	<hr/> Total Column III: 20

(X) Made application to union but continued as employees.

Mr. Smith: I think that is all the questions I have of this witness. [835]

I will state, Mr. Ryan, that the witness has prepared certain payrolls, showing the names on those payrolls for certain dates that you requested him to furnish.

Trial Examiner Mouritsen: We will take a 10-minute recess at this time.

(Short recess.)

Trial Examiner Mouritsen: The hearing will be in session.

Cross Examination

Q. (By Mr. Ryan): Mr. Smith, I show you a document that has been marked for identification as Board's Exhibit 11, which purports to be a

(Testimony of Herman P. Smith.)

payroll for the period ending January 1, 1941, and ask you to look at that and tell me whether or not you had that made up.

(Handing exhibit to the witness.)

Trial Examiner Mouritsen: Marked Board's Exhibit 11 for identification.

Mr. Ryan: For identification, yes.

The Witness: I did.

Q. (By Mr. Ryan): Mr. Smith, I show you Board's Exhibit 10 in evidence and ask you whether or not that is a list of the employees that began the operations of the plant in the fall of 1940.

(Handing exhibit to the witness.)

A. (No answer) [836]

Q. Beginning the '40-'41 season.

A. Will you read the question?

(Question read.)

A. It is a list taken from my records showing these to be the employees.

Q. Now, I show you——

Trial Examiner Mouritsen: And it was made up by you at Mr. Ryan's request?

The Witness: That is right, from my records.

Q. (By Mr. Ryan): Now, I show you Board's Exhibit 11 for identification, which purports to be the payroll for the company for the period ending January 1, 1941, and ask you to look at that and tell us whether or not that is a document prepared by you.

(Handing exhibit to the witness.)

(Testimony of Herman P. Smith.)

A. As near as I can determine, it is.

Trial Examiner Mouritsen: Don't you recall preparing it?

The Witness: I prepared the document, yes; I don't know what has happened to it since it left my hands.

Trial Examiner Mouritsen: Does it appear to be in any different state?

The Witness: No, it does not.

Q. (By Mr. Ryan): Now, will you look at Board's Exhibit 10 and Board's Exhibit 11 and indicate whether there is any [837] change in the list between the period reflected in Board's Exhibit 10 and the payroll period reflected on the payroll of January 1, 1941, and indicated what change, if any?

A. Well, there is a change in the men listed under the heading, "Can pullers."

Q. First of all, is there any change in the list of total employees? There are 19 employees, are there not, on Board's Exhibit 10? A. Correct.

Q. And how many are there on Board's Exhibit 11? A. 20.

Q. So there is an addition of 1 employee to the total list, is that right? A. That is right.

Q. And who is that employee?

A. (No answer.)

Q. That is J. Cardwell, is it not?

A. I will have to check them off—yes, Cardwell.

Q. And one other change in the arrangement; is that S. Hogue who was in the can pulling department as of the time when the operations began in

(Testimony of Herman P. Smith.)

the fall of 1941—for the season '40-'41—by January 1, 1941 he had been moved down to the store room, had he not, from the can pulling department? He is shown under store room.

A. He is shown under store room, yes. [838]

Q. On January 1, 1940? A. Yes, sir.

Mr. Ryan: I offer Board's Exhibit 11 in evidence.

Mr. Petersen: No objection.

Mr. Smith: No objection.

Mr. Whitelaw: No objection.

Trial Examiner Mouritsen: Received as Board's Exhibit 11.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 11.) [839]

BOARD'S EXHIBIT No. 11

Holtville Ice and Cold Storage Co.

Holtville, California

February 11, 1943

Payroll for Period Ending Jan. 1, 1941

Engine Room:

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

(Testimony of Herman P. Smith.)

Can Pullers

G. Harlan

H. Fruhn

A. Standifer

P. Blankenship

Storeroom:

S. Hogue

L. Gettle

R. H. Ireland

B. Pool

Platform & Delivery:

E. Broderick

T. Herring

G. P. Drinkard

H. C. Fredinburg

J. Cardwell.

Garage Mechanic:

N. Ballard

[In pencil]: 20

Mr. Smith: And that is Board's Exhibit 12.

Mr. Ryan: Yes.

Mr. Smith: No objection.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: It is received.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 12.)

(Testimony of Herman P. Smith.)

BOARD'S EXHIBIT No. 12

Holtville Ice and Cold Storage Co.

Holtville, California

February 11, 1943

Payroll for Period Ending Feb. 1, 1941

Engine Room

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers

G. Harlan

S. Hogue

H. Fruhn

A. Standifer

P. Blankenship

Storeroom

L. Gettle

R. H. Ireland

W. T. Morgan

S. Harlan

B. Pool

C. Hefner

D. ONeal

G. Miller

(Testimony of Herman P. Smith.)

Platform & Delivery

E. Broderick

T. Herring

G. P. Drinkard

H. C. Fredinburg

J. Cardwell

J. Thiesen

F. Van Der Linden

Garage Mechanic:

N. Ballard

[In pencil]: 27

Trial Examiner Mouritsen: Was Board's Exhibit 12 prepared under your direction and supervision, Mr. Witness?

The Witness: It was.

Trial Examiner Mouritsen: Are you satisfied that it correctly reflects the employment records of the company?

The Witness: As near as my records indicate.

Trial Examiner Mouritsen: And the information on Board's Exhibits 10, 11, and 12 were taken from the employment records of the company?

The Witness: That is right.

Trial Examiner Mouritsen: I have already received the exhibits. You may proceed.

Q. (By Mr. Ryan): I now show you Board's Exhibit 13 for identification, which purports to be a payroll for the period ending February 15, 1941, and ask you whether or not that was a document

(Testimony of Herman P. Smith.)

prepared by you or under your supervision from the payroll records of the company.

(Handing exhibit to the witness.) [840]

A. It was.

Q. And does it correctly reflect the company's payroll records? A. It does.

Mr. Ryan: I offer it in evidence as Board's Exhibit 13.

Trial Examiner Mouritsen: There being no objection, it is received.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 13.)

BOARD'S EXHIBIT No. 13

Holtville Ice and Cold Storage Co.

Holtville, California

February 11, 1943

Payroll for Period Ending Feb. 15, 1941

Engine Room

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers:

G. Harlan

H. Fruhn

(Testimony of Herman P. Smith.)

A. Standifer

P. Blankenship

D. ONeal

Storeroom

L. Gettle

R. H. Ireland

W. T. Morgan

S. Harlan

B. Pool

S. Hogue

Platform & Delivery:

E. Broderick

T. Herring

G. P. Drinkard

H. C. Fredinburg

R. C. Hefner

W. Hearen

G. Miller

J. Cardwell

~~J. Cardwell~~

J. Thiesen

F. Van Der Linden

Garage Mechanic:

N. Ballard

[In pencil]: 28

Mr. Smith: Mr. Ryan says, "From the company payroll records." It should be brought out it does not include office help or superintendents.

Mr. Ryan: I understand that.

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: But it still accurately reflects the payroll records.

Mr. Smith: Yes.

Trial Examiner Mouritsen: I understand it is not a complete payroll record.

Mr. Ryan: It is incomplete only so far as it does not reflect office and supervisory employees.

Trial Examiner Mouritsen: Very well, it has been received.

Mr. Smith: And that is true of the preceding exhibits, 10, 11 and 12. [841]

Mr. Ryan: So stipulated.

Q. (By Mr. Ryan): I show you first of all——

Mr. Ryan: Mr. Reporter, will you mark this document as Board's Exhibit 14 for identification?

(Thereupon the document referred to was marked as Board's Exhibit No. 14 for identification.)

Q. (By Mr. Ryan): I show you a document which I have had marked for identification as Board's Exhibit 14, which purports to be a payroll for the period ending March 1, 1941, of the Holtville Ice and Cold Storage Company.

I will ask you whether or not that is a payroll prepared under your supervision from the payroll records of the company.

A. (No answer.)

Mr. Whitelaw: Would you mind adding——

Mr. Ryan: Of all the employees except supervisory employees and office employees as of the period reflected on the document.

A. It is.

(Testimony of Herman P. Smith.)

Mr. Ryan: I offer it in evidence as Board's Exhibit 14.

Trial Examiner Mouritsen: There being no objection, it is received as Board's Exhibit 14 in evidence.

Mr. Smith: No objection. [842]

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 14.)

BOARD'S EXHIBIT No. 14

Holtville Ice and Cold Storage Co.

Holtville, California

February 12, 1943

Payroll for Period Ending Mar. 1, 1941

Engine Room:

M. K. Stout

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers:

G. Harlan

H. Fruhn

A. Standifer

P. Blankenship

D. ONeal

(Testimony of Herman P. Smith.)

Storeroom:

L. Gettle
R. H. Ireland
W. T. Morgan
S. Harlan
B. Pool
S. Hogue
W. Hearen

Platform & Delivery:

E. Broderick
T. Herring
G. P. Drinkard
H. C. Fredinburg
R. C. Hefner
J. Cardwell
J. Thiesen
F. Van Der Linden

Garage Mechanic:

N. Ballard

[In pencil]: 27

Trial Examiner Mouritsen: Mr. Ryan, I think you referred to Board's Exhibit 11 as being dated January 1, 1941, or showing the payroll period as of January 1, 1940. I think it is clear that it should be January 1, 1941, is that correct?

Mr. Ryan: That is correct. If I have been referring to it erroneously, I want the record to correctly show that Board's Exhibit 12 is for the

(Testimony of Herman P. Smith.)

payroll period February 1, 1941, Board's Exhibit 13 in evidence is for the payroll period ending February 15, 1941, qualified as we have previously stipulated to indicate that office employees and supervisory employees are not included thereon.

Board's Exhibit 13 is for the payroll period ending February 15, 1941.

Board's Exhibit 14 is for the payroll period ending March 1, 1941.

Mr. Reporter, will you please mark this document as Board's Exhibit 15?

(Thereupon the document referred to was marked as Board's Exhibit No. 15 for identification.)

Q. (By Mr. Ryan): Mr. Smith, I show you a document which I have had marked as Board's Exhibit 15 for identification, which purports to be a payroll for the period ending January 1, [843] 1942, and which I also understand includes all employees except office and supervisory employees, is that correct?

(Handing exhibit to the witness.)

A. As taken from my records it is correct.

Q. At your direction and under your supervision?

A. That is right.

Mr. Ryan: I offer in evidence Board's Exhibit 15.

Trial Examiner Mouritsen: Hearing no objection it is received in evidence as Board's Exhibit 15.

(Thereupon the document referred to was

(Testimony of Herman P. Smith.)

received in evidence and marked as Board's
Exhibit No. 15.)

BOARD'S EXHIBIT No. 15

Holtville Ice and Cold Storage Co.

Holtville, California

February 12, 1943

Payroll for Period Ending Jan. 1, 1942

Tank Room:

M. K. Stout

G. Harlan

S. Hogue

L. Gettle

D. Stewart

Storeroom:

R. H. Ireland

W. T. Morgan

G. P. Drinkard

C. Hefner

H. Fruhn

Platform & Delivery:

T. Herring

J. Garber

Garage Mechanic:

N. Ballard

[In pencil]: 13 in unit

(Testimony of Herman P. Smith.)

Mr. Ryan: Mr. Reporter, will you mark this document as Board's Exhibit 16 for identification?

(Thereupon the document referred to was marked as Board's Exhibit No. 16, for identification.)

Q. (By Mr. Ryan): I have had marked for identification as Board's Exhibit 16, a document which purports to be the payroll for the period ending February 1, 1942, including all employees except office employees and supervisory employees, is that correct?

(Handing exhibit to the witness.)

A. Correct.

Q. And that record was taken from the payroll records of the company, was it not, under your supervision and direction? [844]

A. Pardon me a minute, will you read the next to the last question over again?

(Question indicated read.)

The Witness: Correct.

Mr. Ryan: I offer Board's Exhibit 16 in evidence.

Trial Examiner Mouritsen: There being no objection, it is received in evidence as Board's Exhibit 16.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 16.)

(Testimony of Herman P. Smith.)

BOARD'S EXHIBIT No. 16

Holtville Ice and Cold Storage Co.

Holtville, California

February 12, 1943

Payroll for Period Ending Feb. 1, 1942

Tank Room:

M. K. Stout

S. Hogue

L. Gettle

G. Harlan

Storeroom:

R. H. Ireland

W. T. Morgan

A. ONeal

O. Stephens

D. Stewart

A. Hensly

G. Daily

L. E. Hodges

C. D. Allen

R. S. Brixey

Platform & Delivery:

S. Harlan

G. P. Drinkard

W. Fauldner

C. Hefner

J. Garber

W. C. Hefner

T. Herring

(Testimony of Herman P. Smith.)

Garage Mechanic:

N. Ballard

Electrician:

C. H. Johnston

[In pencil]: 22 in unit

Mr. Ryan: Mr. Reporter, will you mark this document as Board's Exhibit 17 for identification?

(Thereupon the document referred to was marked as Board's Exhibit No. 17, for identification.)

Q. (By Mr. Ryan): I have had marked for identification as Board's Exhibit 17 what purports to be the payroll for the period ending February 15, 1942, of all employees of the company, except office employees and supervisory employees, and I show it to you, Mr. Smith, and ask you whether or not it was prepared from the payrolls of the company and under your supervision.

(Handing exhibit to the witness.)

A. It was.

Q. And is it a correct reflection of your payroll records of that period? A. It is. [845]

Mr. Ryan: I offer it in evidence as Board's Exhibit 17.

Trial Examiner Mouritsen: There being no objection, it is received and marked as Board's Exhibit 17.

(Testimony of Herman P. Smith.)

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 17.)

BOARD'S EXHIBIT No. 17

Holtville Ice and Cold Storage Co.

Holtville, California

February 12, 1943

Payroll for Period Ending Feb. 15, 1942

Tank Room:

M. K. Stout

G. Harlan

S. Hogue

L. Gettle

Storeroom:

R. H. Ireland

W. T. Norgan

D. ONeal

O. Stephens

A. Hensly

G. Daily

C. D. Allen

R. Brixey

Platform & Delivery:

S. Harlan

G. P. Drinkard

W. Fauldner

C. Hefner

W. C. Hefner

T. Herring

J. Raine

(Testimony of Herman P. Smith.)

Garage Mechanic:

N. Ballard

Electrician:

C. H. Johnston

[In pencil]: 20 in unit

Mr. Ryan: May I go off the record for a minute?

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Q. (By Mr. Ryan): Have you got your Social Security record book here with you, Mr. Smith?

A. I have.

Q. I wonder if you would get it, please?

Trial Examiner Mouritsen: Mr. Ryan, would it save time if you went over this record with the witness before asking him to testify as to what it shows?

Mr. Ryan: I think, perhaps, we could, but I will ask him some questions about it first.

Q. (By Mr. Ryan): Mr. Smith, as I understand it, isn't it true that—strike that out.

Mr. Smith, what was the company's procedure with regard to giving vacations in previous years, up to the fall of 1941?

A. Gave one week vacation. [846]

(Testimony of Herman P. Smith.)

Q. And was that vacation with pay or without pay?

A. What constitutes a vacation? I always thought it was with pay if it was a vacation. It was one week with pay.

Q. Was it customary for the company to give one week with pay and one week without pay—two weeks—one week with pay and one week without?

A. I don't know as that was a common practice. I recollect one summer that that policy was followed.

Q. Now, what was the provision of the company with respect to who would get vacations and who would not get vacations with pay?

A. I don't recollect there being any set policy that was followed.

Q. Now, before a man could take a vacation and get paid while he was on his vacation, what requirements, if any, was there, with respect to the amount of time he must have had working for the company during the period preceding that?

A. I have no knowledge as to there being any specified time.

Q. In other words, would you say that a man who was hired, for example, only three weeks during a vegetable season, and who had never worked for the company before, would be given a vacation of a week with pay?

A. Well, if he had been hired three weeks previous to the close of our shipping season I would say that he wouldn't be. [847]

(Testimony of Herman P. Smith.)

Q. Now, will you look at Respondent's Exhibit 6 in evidence, Mr. Smith. You will note that after the name H. Fruhn and in the column entitled or headed "July 31" for the year 1941 are the letters "Va." What does that mean—does that have reference to the word "vacation"?

A. It is with reference to their having received one week's vacation pay, I gathered. In the time cards there was an X card that was put in and it is "week vacation" figured, and that was included with the time that he worked, if any.

Q. What does that mean? Does that mean the man was on vacation, or does it mean that he went on vacation as of that time?

Mr. Smith: You mean July 31.

Mr. Ryan: Yes, referring now to Fruhn.

The Witness: It is evident that he put in no time during the last half of July.

Q. (By Mr. Ryan): So he was on vacation and you have the word "vacation" there.

A. Yes, evidently he was given some vacation pay.

Q. Now, the next time you see the word "vacation" on that document, which is in evidence as Company's Exhibit 6, is following the name of Perry T. Blankenship, is that not right?

A. Correct. [848]

Q. And then immediately following Blankenship is the name of D. O'Neal, and the column entitled July 31, or headed, July 31, does not have anything but a blank there, and that indicates, does it not, that

(Testimony of Herman P. Smith.)

O'Neal's employment terminated on July 15, or during the payroll period up to July 15, and that he left the employ of the company and was not on vacation, isn't that right?

A. No, it doesn't. The boy that I had go over these time cards didn't go back to the time cards and check them all. This information as he compiled it, and I am not sure of those four items as to just what that does indicate, but evidently he took that off of a card.

Trial Examiner Mouritsen: Does Respondent's Exhibit 6 reflect the only employees who received vacations during that period?

The Witness: I don't think it does. It would have to be checked from that angle. I don't know.

[849]

Mr. Ryan: Mr. Reporter, will you mark this as Board's Exhibit 18 for identification. [867]

(The document referred to was marked as Board's Exhibit No. 18, for identification.)

Q. (By Mr. Ryan): Mr. Smith, I show you a document that has been marked Board's Exhibit 18 for identification, entitled "Employees who received vacation pay in 1941", and ask you to look at it, and tell us whether or not that document was prepared under your instructions (handing exhibit to the witness).

A. That is right, it was.

Q. And is it a correct statement as to the employees who received vacations during the year?

(Testimony of Herman P. Smith.)

A. As indicated by our records.

Q. 1940-41?

A. As indicated by our records, yes.

Mr. Ryan: I offer Board's Exhibit 18 in evidence.

Trial Examiner Mouritsen: Any objection?

Mr. Smith: No objection.

The Witness: On the original, of course, our letterhead appears in the corner, on these it doesn't.

Trial Examiner Mouritsen: That doesn't make any difference; the information is the important matter.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: I take it Mr. Smith, this information was taken from your employment records.

The Witness: From the time cards—it appears on the [868] time cards, vacation pay, indicating those that received vacation pay.

Trial Examiner Mouritsen: And you are satisfied from your examination of those time cards that it is a complete list of all those who received vacation pay during 1941?

The Witness: Yes.

Trial Examiner Mouritsen: I will receive it as Board's Exhibit 18.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit 18, was received in evidence.)

Q. (By Mr. Ryan): Mr. Smith, the employment records of the company indicate, do they not,

(Testimony of Herman P. Smith.)

that at the beginning of the operations in the fall of 1940, for the 1940-41 season, M. K. Stout, H. G. Miller and E. S. Jones and H. T. Pool, began the operations of the engine room, is that right, those four?

A. Well, I believe so, although I don't have all those definitely in my mind.

Q. I show you the payroll record for the fall of 1940, Board's Exhibit 10 in evidence. That is the list of employees that began the operation of the plant, is it not, up to that period (handing exhibit to the witness)?

Trial Examiner Mouritsen: I think that has already [869] been established, Mr. Ryan.

The Witness: I was just checking. Yes, those four men began as engineers or in the engine room.

Your question covers this entire schedule, does it? I believe you just specified those four men.

Q. (By Mr. Ryan): Because I want to ask you something about them.

E. S. Jones appears in that group. Have you now got your records prepared which would show when E. S. Jones left the employ of the company in that year?

A. I have the information but it is not in presentable form.

Q. Do you have it? A. Yes, I can get it.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

The Witness: My records show that Jones was

(Testimony of Herman P. Smith.)

not on our payroll after May 1, 1941. The last pay period worked was the last half of April, 1941.

Q. (By Mr. Ryan): Is it a fact that he quit the employ of the company and obtained a job elsewhere about that time, as his reason for leaving the employ of the company?

A. My understanding is that he went into business for himself. [870]

Trial Examiner Mouritsen: The principal thing, so far as we are concerned, is whether he quit or not.

The Witness: Yes, he quit.

Trial Examiner Mouritsen: He is not listed on Board's Exhibit 18.

The Witness: No.

Q. (By Mr. Ryan): And Board's Exhibit 18 is a group of employees who received vacation pay. I understand that he left and did not receive vacation pay, isn't that right?

A. He did not receive vacation pay.

Q. He had worked all the times during that season up to the time of his employment terminated in the engine room, isn't that right? A. Yes.

Q. And that is also true of M. K. Stout, H. G. Miller, and H. T. Pool?

Trial Examiner Mouritsen: That is a rather confusing question.

Mr. Whitelaw: I don't know what he means by it.

Mr. Ryan: I will strike it.

Q. (By Mr. Ryan): M. K. Stout began in the engine room at the beginning of operations and he

(Testimony of Herman P. Smith.)

continued, also, did he not, through the entire season in that same department? A. He did.

Q. And that is also true of H. G. Miller, is it not, that [871] he began in that department and continued all during the year?

A. That is right.

Q. And H. T. Pool, is the same thing true?

A. That is right.

Q. Now, looking at the engine maintenance department, the plant began operating with M. Wooldridge and L. C. Hart. Can you tell us when M. Wooldridge left the employ of the company?

A. During the last half of August, 1941.

Q. And he hasn't worked for the company since?

A. He has not.

Q. He obtained a job, I believe you said, some place else?

A. That is right—that is my understanding.

Trial Examiner Mouritsen: What he did so far as the company was concerned—did he quit?

The Witness: He quit, yes.

Q. (By Mr. Ryan): He had worked at all times in the engine maintenance room from the beginning of operations until he quit in August, isn't that right? A. He had.

Q. L. C. Hart also began in the engine maintenance and remained there during the entire time—during his entire employment for the year, is that correct? A. 1941. [872]

Q. That is doing repair work?

A. (No answer.)

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: For the 40-41 season?

The Witness: Correct, he had.

Mr. Whitelaw: Off the record. Might we ask what Mr. Ryan means by "engine maintenance room?" Is there a classification of that nature?

Mr. Ryan: There is such a classification on the payroll.

The Witness: Classification engine maintenance.

Trial Examiner Mouritsen: That is under engine room. I think it is clear.

Q. (By Mr. Ryan): In the can pulling department, the company began operating in the fall of 1940-41 season with G. Harlan——

Trial Examiner Mouritsen: With the employees listed on Board's 10 under "can pullers."

Mr. Ryan: Yes.

The Witness: Is there a question before me?

Q. (By Mr. Ryan): They began operating with that crew, didn't they? A. Yes.

Q. And those employees, with the exception of S. Hogue, continued to operate in that department during the entire season, isn't that right?

A. You mean that they were not off? Will you state the [873] last question again?

Mr. Ryan: Will you read the question?

(Question read.)

Q. (By Mr. Ryan): Of the 1940-41 season?

A. Yes.

Q. S. Hogue continued to work for the company but was transferred back and forth between the

(Testimony of Herman P. Smith.)

can pulling department and the storeroom, was he not, during that season? A. '40-41 season?

Q. Yes.

A. My recollection is that there was some shifting that occurred between the can pulling and storeroom.

Trial Examiner Mouritsen: So far as he was concerned?

The Witness: So far as this Mr. Hogue was concerned, yes.

Q. (By Mr. Ryan): Now, the storeroom, looking at Board's Exhibit 10, shows the employees that began the operations of the plant for the fall of 1940—the beginning of the 1940-41 season?

A. Is that a question?

Trial Examiner Mouritsen: It does not need to be if you want to tell him that that is what the record shows so far.

Q. (By Mr. Ryan): Those three employees continued to operate in that same department all of the season, did they [874] not?

A. Well, I believe so, although the record will show.

Q. And with respect——

Mr. Whitelaw: Let him finish his answer, will you?

The Witness: I had finished.

Q. (By Mr. Ryan): The persons listed on Board's Exhibit 10 in the platform and delivery department, continued, did they not, to operate in that department during the entire season?

(Testimony of Herman P. Smith.)

A. As near as I recollect they did.

Mr. Whitelaw: Mr. Ryan, may we go off the record?

(Discussion off the record.)

On the record.

Q. (By Mr. Ryan): Mr. Smith, with respect to this Jack Garber, who works in the office—is that right?

A. He did work in the office and on the platform.

Q. And he began working there in the spring of 1941, I believe you said, is that right?

A. Now, if you want me to give you a little bit of the history, he began the 1st of September in '41.

Q. 1941?

A. That is right, and he followed Everett Broderick—He took the job that Everett Broderick had.

Q. Is that the E. Broderick shown here?

A. Yes, on the platform. This is under platform delivery. [875]

Q. Are you sure about the year, Mr. Smith?

A. Yes, I am sure.

Q. September would be just a few days before Mr. Davis left the employ and I understood he had been working some months before then?

A. No, September 1st. He worked part time and went to school—worked part time and he started in and took Broderick's place to do my janitor work—that was really the main item, was

(Testimony of Herman P. Smith.)

janitor work around there, and he was in school and put in just part time.

Trial Examiner Mouritsen: He did not start as early as May doing that?

The Witness: No.

Q. (By Mr. Ryan): And have you his record there in the book? A. I have.

Q. Will you look at it and tell us when he began to work?

Mr. Whitelaw: In what capacity?

Mr. Ryan: In any capacity.

The Witness: He put in 64 hours the first half of September.

Q. (By Mr. Ryan): 1941? A. Yes.

Trial Examiner Mouritsen: Does that cover this part time work he did while going to school? [876]

(No answer.)

Q. (By Mr. Ryan): Then did he thereafter at any time begin to work steady for the company?

A. He did at approximately January 15, 1942.

Q. And how long did he continue to work steadily?

A. Until he was drafted, which was just a couple of weeks back.

Q. And what did he do after he began to work steadily, did he continue on the same job or was he transferred back and forth? Will you explain that to us?

A. No. He continued doing the same kind of work.

Q. And what kind of work was that?

(Testimony of Herman P. Smith.)

A. Well, just sort of general flunkey on the distribution end, if you want to put it in plain words. There was janitor's work in the office that had to be taken care of and our clear ice quarters had to be swept up and cleaned up and there was the crushing of clear ice and cutting up the blocks of clear ice preparing them for sale, and I believe he looked after the loading out of the clear ice truck.

Q. Did he help you with the book records?

A. Well, he did. He kept the white ice sales ledger—that is, he made up my bills for the vegetable packing sheds.

We collect weekly and he took care from day to day of making up the summary for our white ice sales for that particular day.

Q. That had been work that had previously been done by [877] H. L. Davis, as part of his job?

A. Yes; he had handled that ice in connection with the delivery of vegetable ice.

Q. Davis also did other work around there which was taken over and done by Garber after he came to the employ of the company, is that right?

A. Very little other than that.

Q. How much did Garber receive from the company in the way of wages per month or hour—how was he paid?

Mr. Whitelaw: When?

Mr. Ryan: When he began to work in September, 1941.

(Testimony of Herman P. Smith.)

The Witness: He received 40 cents an hour. That was his starting wage.

Q. (By Mr. Ryan): What was he receiving when he left the employ of the company?

A. 65 cents an hour.

Q. For a 40-hour week? A. Yes.

Q. And how long had he been receiving 65 cents an hour at the time that he left the employ of the company?

A. Since, I believe, since November—I think since November 1, 1942.

Q. Did he jump from 40 cents up to 65 cents?

A. No; he went from 40 to 45 and to 50; 55 to 60 and up to 65. That was the understanding with those fellows [878] when I put them on, that they would start in at 40 cents and as they became familiar with the work and their ability increased, their rate would increase also.

Q. Now, after Davis left the employ of the company, the work which he had been doing out on the platform and delivery was thereafter done by Mr. Tom Herring also, was it not?

A. Yes, the work connected with the getting of the ice to the sheds was handled by Mr. Herring.

Q. He took charge of the drivers?

A. That is right, he was responsible for getting out the ice.

Q. He supervised the operation of that department, is that right?

A. Yes, I believe he did.

(Testimony of Herman P. Smith.)

Q. About when did he take over charge of the department? A. January 1, 1942.

Q. Davis had done that for the preceding year?

A. 1941, yes.

Q. What was Tom Herring paid immediately when he began taking over that job of Davis'?

Mr. Whitelaw: Haven't you a record you can refer to, Mr. Smith?

The Witness: It doesn't show the rate per hour.

Q. (By Mr. Ryan): Was he paid by the month or hour after he took that job over, Mr. Herring?

[879]

A. He was paid by the month—\$165 a month.

Q. And since taking that job over has Mr. Herring continued in the employ of the company throughout the entire year? I believe you said he began in January, 1942? A. That is right.

Q. On that job, and has he continued 12 months a year thereafter?

A. Let me qualify this answer by saying he was a clear ice peddler after the vegetable ice shipping season of 1942.

Q. Is he paid on the basis of what he sells then?

A. That is right.

Q. Or does he continue to receive his \$165 a month?

A. No, on what he sells, the same as the other clear ice delivery men.

Q. Can you tell by looking at your records there, the last month in 1942 in which he received \$165 a month?

(Testimony of Herman P. Smith.)

A. The month he received \$165—there is a change in his salary during the season. The last month that he received his monthly salary from the company was, if I remember correctly, the first half of June. He was getting \$92.50 a pay.

Q. His salary then had been raised, as I take it?

A. Yes, sir.

Q. From \$165 up to—— A. \$185.

Q. Twice ninety-two and a half? [880]

A. Yes, \$185. And the first half of June he was paid for approximately one week at the rate of \$185 a month.

Q. And then what time again in 1942 did he begin, if at all, to receive his monthly salary after he had sold clear ice?

A. It seems to me November 15th. That is the pay starting November 15th.

Trial Examiner Mouritsen: The starting or ending of that pay.

The Witness: Starting November 15th and ending December 1st.

Q. (By Mr. Ryan): When he was put back and started to receive a monthly salary, is that right?

A. That is what the record so indicate.

Q. What did he receive then as a monthly salary starting as of that time?

A. Well, under the new pay schedule that was put into effect last fall he was given a 10 per cent increase, which is \$18.50, over the \$185—\$202, I think, and something.

(Testimony of Herman P. Smith.)

Q. Can you check there and find out when he began or he started again at \$165 in January, 1942, can you tell us then how soon thereafter he received a raise and what it was?

A. Well, I don't remember the exact history, but my records indicate, starting in with April 1st, he received [881] \$185 a month.

Q. That is the first time he is shown with any increase over \$165?

A. Well, evidently February and March—possibly he was paid \$165. My records really don't indicate how it was paid. There is some variation in the amount of money he received. He may have been paid \$165 plus additional wages for hours put in over a certain fixed figure. I am not sure about that. It doesn't indicate here.

Q. It shows him earning more than \$165 a month between January and April, does it?

A. That is right.

Q. How much more was the additional amount you have listed on your records, if any?

A. Well, for the pay period ending January 15th he got a check for \$102.50, and the pay period ending February 28th he got a check for \$102.50. For the pay period ending March 15th he got a pay check for \$92.50.

For the pay period ending March 31st he got a check of \$118.07. There may have been some adjustment made there in some manner or another, but this record here does not indicate just the whys and wherefores.

(Testimony of Herman P. Smith.)

On April 15th his check averaged off to \$92.50 and continued that way on through to the first week in June, 1942. [882]

Q. The last year that Davis worked for you he got \$160 or \$165? A. \$160, I believe.

Q. And he got that on a basis of a 12-months period, is that right—that is, he was to be paid that the year around?

A. I had no understanding that that was the case.

Q. As a matter of fact you paid him all the time \$160 a month, didn't you, month after month?

A. From the time that he——

Q. During the vegetable season?

A. From the time that he started in on a \$160 a month salary, yes, he was paid that straight through.

Q. Up to the time he left the employ of the company? A. Yes. [883]

THOMAS FRANKLIN HERRING,

called as a witness by and on behalf of the Employees Association, having been first duly sworn, was examined and testified as follows:

Trial Examiner Mouritsen: Your name is Thomas Herring?

A. Thomas Franklin Herring.

(Testimony of Thomas Franklin Herring.)

Direct Examination

Q. (By Mr. Yeager): Where are you employed Mr. Herring? A. Holtville Ice Company.

Q. When did you first commence work there?

A. About 1932, August 26th, I believe.

Q. And were you working there during the season of 1941? A. Yes, sir.

Q. In what capacity at that time?

A. Well, I was hauling vegetable ice in the winter and clear ice in the summertime. [886]

Q. You were one of the truck drivers, were you not? A. Yes, sir.

Q. And do you recall the period when a change-over was made at the Holtville Ice Company?

A. Yes, sir.

Q. From Diesel to electricity? A. Yes, sir.

Q. And were you employed at that time or were you on vacation?

A. Well, I was just winding up the clear ice deliveries and working a little for them, part time.

Q. And that work was done under contract, was it not? A. Yes, sir.

Q. With whom was that contract?

A. Reed Manchester.

Q. And what work did Reed Manchester do there?

A. Well, he was doing construction work in the storage room.

Q. And was any work contracted to the York people there? A. Yes.

(Testimony of Thomas Franklin Herring.)

Q. Did the York people work at the same time the Reed Manchester people were working?

A. Yes, sir.

Q. And were you out there at the plant during that period—during the period that that construction was going on? [887]

A. Yes, sir.

Trial Examiner Mouritsen: You mean part of the time you were selling this clear ice and part of the time you were working for Manchester, or you were working for the Holtville Ice Company?

The Witness: Well, I would go out on the route of a morning early and get through about 10 or 9 and come back there and go to work under Reed Manchester.

Q. (By Mr. Yeager): Did he pay you or did the Holtville Ice Company pay you?

A. He paid me.

Q. Did you work for the York people at any time during that period?

A. No, I did not.

Q. During the time the York people were there did you have any conversations with any of the employees of the York people or overhear any conversations with their men?

A. No, I had just general talks with them at noon hour or something like that.

Q. About what time was that—can you fix a date or month?

A. Well, it was along in September, I would say. I couldn't say any particular date.

Q. Do you recall who was present when you were talking with the men?

A. No, I don't

[888]

(Testimony of Thomas Franklin Herring.)

Q. And the conversations were between you and the employees of the York Company?

A. Yes, sir.

Trial Examiner Mouritsen: Do you know any of their names, those with whom you talked?

The Witness: No, I don't. They were just there for a short time and I didn't get that well acquainted with them.

Q. (By Mr. Yeager): Tell as best you can recall what your conversation was with those men.

Mr. Ryan: I am going to object, Mr. Examiner, unless he identifies the people with whom he talked; it would be impossible for us to go into that matter thoroughly unless we know who he was talking to.

Mr. Yeager: He has fixed it as closely as he can.

Mr. Ryan: It is immaterial as far as I am concerned.

Trial Examiner Mouritsen: I will permit him to go into it; you may answer.

The Witness: Well, the best I recall we would be eating at noon and have a talk about the work that was going on, and it was only about, I believe, three or four of them working first. There was only two of the welders working and they refused to work without their union helpers, so they quit their operation for a day or two until they could get their own helpers. [889]

The company wanted to put in common labor men that they had around there to work at that. It was slack season for them, but they wouldn't go for that.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): You mean the men from the Holtville Ice Company that were there?

A. Yes, they was going to help the welders.

Q. And the welders refused to work with them?

A. Yes, sir.

Mr. Ryan: I object to all this line of questioning on the ground that so far, he has stated nothing but conclusions.

Trial Examiner Mouritsen: You were asked for the conversation you had, Mr. Witness, and I don't think you have covered any of that yet.

Would you tell us just what you said to these employees and what they said to you?

Mr. Ryan: I want to move to strike what he has testified so far.

Trial Examiner Mouritsen: I will let it remain, but that is the impression I have gained so far. It has been nothing but a smattering of his conversation with those employees.

The Witness: Well, in particular, one noon while we were eating, one of the welders said to me that, "I guess we won't work this afternoon." He says, "We have got to [890] have union helpers", and he says, "It will take them a day or two to get them down from Los Angeles", and that is the only particular conversation that I recall with them.

Q. (By Mr. Yeager): Then did you have any conversations with any of the carpenters that were working for Reed Manchester?

A. Well, yes, I did.

(Testimony of Thomas Franklin Herring.)

Q. Did you have any conversations with them concerning labor matters? A. Yes.

Q. And when did those conversations take place?

A. They were along——

Mr. Ryan: First, can you identify any of the carpenters?

Trial Examiner Mouritsen: You can't ask him those things all at one time.

The Witness: What was your question?

Trial Examiner Mouritsen: Read the question.

(Question read.)

The Witness: Along, I would say, the first part of September up to the middle, or something like that.

Q. (By Mr. Yeager): And who were those conversations with?

A. Well, there was part of them with the foreman. I can't recall his name right now. I know his name, his first name was Gene, I believe, and he suggested that all [891] the boys there at the plant join the A. F. of L. and he said that if we wanted to go into it that they would, the carpenters and the York men, while they were on there would be a good time to go into the union, because if they laid us off, why, they would lay off with us—that they wouldn't work on the job if there was any union trouble.

Q. (By Mr. Yeager): If who were laid off?

A. If we were laid off.

Q. If who laid you off?

(Testimony of Thomas Franklin Herring.)

A. If the Ice Company laid off on account that we had anything to do with the union, that they would lay off with us and that would stop the whole work and they didn't figure the Ice Company would go for that and that they would let us all work.

Q. And what did you say in reply to that?

A. Well, I didn't like the idea of it myself, so I didn't talk much about it. Some of the boys, I guess——

Trial Examiner Mouritsen: Wait a minute. The only question he asked you was what was said, if anything, to these carpenters or this carpenter foreman, as I understand it.

Mr. Ryan: I move to strike as a voluntary statement that he didn't like it— didn't think very much of the idea.

Trial Examiner Mouritsen: I will grant the motion. [892] Tell us what you said in reply to the carpenter foreman.

The Witness: I really didn't say anything to him—have anything to say to him. I just listened to him talk and he told me the good points about the union and my not knowing much about them I didn't have any talk back to him.

Q. (By Mr. Yeager): Now, about that same time did a representative of the labor union come out to the plant there and talk with you men?

A. Yes, sir.

Q. And can you fix the approximate date on that?

(Testimony of Thomas Franklin Herring.)

A. Well, it was around September the 20th some time.

Q. Do you recall his name? A. Dick Neff.

Q. And who did he talk to?

A. He talked to all employees that was working in the storeroom that particular day.

Q. Were you one of them? A. Yes, sir.

Q. Do you recall the names of the other employees that were there working?

A. Well, Henry Fredenburg, Herman Fruhn, Pete Drinkard. I recall those. I don't recall any more.

Mr. Petersen: May we have Mr. Neff identified. He said "Dick Neff came from the union." May we have him identified? [893]

Q. (By Mr. Yeager): Do you know who he was? A. Well—

Q. Did he introduce himself and say who he was?

A. Well, I knew him myself and he came up and shook hands with me. I wouldn't say that is his first name, but I was under the impression it was Dick Neff.

Trial Examiner Mouritsen: Is that Knapp or Neff?

Mr. Petersen: N-e-f-f.

Q. (By Mr. Yeager): What did he say to the men at that time?

Mr. Petersen: Who was Mr. Neff—who was he

(Testimony of Thomas Franklin Herring.)

representing when he came there? Let us find it out. He said he represented the union. Which union did he represent?

The Witness: A. F. of L. Teamsters Union.

Trial Examiner Mouritsen: Did he say who he was representing or did you know that from past experience?

The Witness: No, he told us who he was representing.

Trial Examiner Mouritsen: All right.

Q. (By Mr. Yeager): What did he say to you?

A. Well, he introduced a fellow that he had with him, but I have forgotten his name. I never knew him. And he told us they were from the A. F. of L. Teamsters Union, and they wanted to have the boys there over at their hall that night and talk over union matters. [894]

Q. Did he say anything else that you recall?

A. No, sir, I don't recall anything else that he said. He talked a few minutes among the different employees.

Q. Now, at the time he was discussing—at the time these discussions took place, were Reed Manchester men and the York men—was there any discussion among the employees there about the effect of this change-over? A. Yes, there was. [895]

Q. (By Mr. Yeager): Yes, what employees was this particular discussion between?

A. Well, they all talked of it at different times.

Q. Who do you mean by "all"?

(Testimony of Thomas Franklin Herring.)

A. I mean it was just general talk and gossip around the plant when they changed over they wouldn't need all the men they were working at that time on the Diesel set-up.

Q. You mean all of the employees that were working for the Holtville Ice and Cold Storage Company at that time? A. Yes, sir.

Q. Was there any discussion as to the advisability of going into the union?

A. Yes, there were.

Q. Who was that discussion with?

A. Well, I recall it was with Fredenburg and Standifer mostly.

Q. At what time—when did that take place?

A. Well, for the last month before—well, I will say while they were working on the short jobs around there.

Q. Was it while the Reed Manchester people were working there? A. Yes, sir.

Q. And what was that conversation? What did these men say and what did you say? [896]

The Witness: Well, this talk was going on all through September, as I recall it. They were on a shut-down then and they were all wondering whether they would be the ones to go back to work or would they be the ones that would be laid off.

Q. (By Mr. Yeager): My last question was whether they discussed the effect of joining the union as to whether they would be laid off or not.

A. Yes, they did.

(Testimony of Thomas Franklin Herring.)

Q. What was said?

Trial Examiner Mouritsen: Who did this?

The Witness: Well, Fredenburg. He contacted me about the union and that was, I believe, the day that we met in the hall that night, and I believe they said that [897] was the 26th of September.

Trial Examiner Mouritsen: You mean the day before you met there that night?

The Witness: Yes.

Trial Examiner Mouritsen: Fredenburg talked to you?

The Witness: That morning Fredenburg handed me a little piece of paper and he told me then there would be a union man over that day, he thought, to talk about the union to us, and that it was already talked among—well, Fredenburg and two or three of them there that there would be a meeting that night. I didn't know that at the time, but he told me there would be a meeting that night and they had some kind of a paper they wanted us to sign before that meeting.

Trial Examiner Mouritsen: Did you sign the paper?

The Witness: No, I did not.

Q. (By Mr. Yeager): Was anything else said?

A. No.

Q. Did you attend that meeting? A. Yes.

Q. On the 26th of September? A. Yes.

Q. 1941? A. Yes, sir.

Q. Did you sign an application? [898]

A. Yes, sir.

(Testimony of Thomas Franklin Herring.)

Mr. Smith: Let me interrupt you. You mean by that an application to the Teamsters Union of the American Federation of Labor?

The Witness: Well, I presume that is what it was. I didn't pay any money but I did sign a little paper at their hall that night.

Q. (By Mr. Yeager): Now, Mr. Herring, prior to this meeting at the union hall had there been any discussion among the employees of the Holtville Ice and Cold Storage Company concerning—

Mr. Ryan: I am going to object to this before he gets through, because it is a leading question and I know he is going to suggest the subject matter in the question.

Trial Examiner Mouritsen: We don't want to go into all of the conversations, but I will permit this answer.

Q. (By Mr. Yeager): Had there been any discussion among the men concerning the formation of an employees union? A. Yes.

Q. And when had that taken place?

A. Oh, it was in the spring of 1941, along in February or March in there.

Q. And what employees there at the Holtville Ice Company discussed that matter?

A. Well, there was Fredenburg and Pete Drinkard, Jack [899] Johnson and myself.

Q. And did you have any specific conversations concerning the matter, as you recall?

A. Yes; I was hauling ice from the Pure Ice Company in El Centro and there was talk of all of

(Testimony of Thomas Franklin Herring.)

the ice companies forming a union of their own for the employees, and I would say along in February it was that they invited me over to a meeting one night here at El Centro for that purpose.

Q. You are speaking of the Pure Ice Company here in El Centro? A. Yes.

Q. You say they invited you. Who do you mean?

A. Oscar Gilliland, I believe is the fellow's name.

Trial Examiner Mouritsen: Can you spell that?

The Witness: No, I can't.

Trial Examiner Mouritsen: Gilliland?

The Witness: Yes.

Q. (By Mr. Yeager): And who was he?

A. He was the engineer there at the time.

Q. At the Pure Ice Company?

A. No; he is working for the Imperial Ice Company, I believe, but he was over there this day and he contacted me at the Pure Ice Company.

Q. And did you contact any of the employees concerning this meeting? [900] A. Yes, sir.

Q. Who?

A. Pete Drinkard, Fredenburg and Jack Johnson.

Q. And what was this man's name?

A. Gilliland.

Q. Did Mr. Gilliland tell you the purpose of this meeting that was being called?

A. Yes, sir. He told me it was for forming a union of the Ice Company employees.

Q. And did you attend this meeting?

A. Well, I meant to, but it didn't turn out so.

(Testimony of Thomas Franklin Herring.)

Q. Well, just tell us—what transpired in regard to that meeting?

A. Well, he told me where to go, the address where to go, Eighth and Main, and the four of us got together that night and went there to the address.

Q. What four of you?

A. Pete Drinkard and Fredenburg and Jack Johnson and myself.

Q. All right, go ahead.

A. When we got to the address, why, we went upstairs and it was the A. F. of L. Hall so we see we had been steered wrong, so first we went right back downstairs and didn't even go inside, and I think it was Jack Johnson then said, "Let us go back up and see what he has to say," so we did, [901] and their manager was there and one lady was all that was present.

Mr. Petersen: Which manager?

The Witness: I don't know his name.

Trial Examiner Mouritsen: You mean the manager of the union?

The Witness: A. F. of L., yes. And he talked to us just—oh, I would say ten minutes. He wanted to know if we were from the Ice Company and we told him we were, and he asked which ice company and we told him and he asked us if we were in favor of joining the union, and we told him we weren't and he wanted to know why we weren't, and we told him that we just didn't like the idea and that is all I can recall. We didn't tell him what our purpose was.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): And when you came to this meeting in El Centro did you understand—what was your understanding as to the purpose of the meeting?

A. Well, it was to form——

Trial Examiner Mouritsen: I don't think that is proper.

Mr. Ryan: Object to that.

Trial Examiner Mouritsen: He has given us what Gilliland said to him.

Q. (By Mr. Yeager) Was anything more done concerning the formation of an employees union between that—— [902]

Trial Examiner Mouritsen: At that time?

Q. (By Mr. Yeager): Between that time and the time you attended the A. F. of L. union or went to the A. F. of L. Union Hall?

A. No, there weren't.

Q. Was the matter discussed among the men during that time? A. No, not that I recall.

Q. Well, when was the next time the question of organizing an employees union there at the plant was brought up?

A. Well, it was after we had signed with the A. F. of L.

Q. How soon after, Mr. Herring?

A. The next day.

Q. And who was that discussion with?

A. Well, it was with George Harlan and myself.

Q. And yourself? A. Yes.

Q. And had George Harlan attended that meeting? A. No, he had not.

(Testimony of Thomas Franklin Herring.)

Q. And was anybody else present? A. No.

Q. What was the discussion at that time? What did you say and what did Mr. Harlan say?

Trial Examiner Mouritsen: Where did this discussion take place? A. At my house. [903]

Trial Examiner Mouritsen: You say it was the next day after?

The Witness: Yes.

Trial Examiner Mouritsen: That would be September 27th, 1941?

The Witness: That is right. George Harlan came up to my house this night and we had a little talk about the union and he asked me was I over the night before, and I told him I was, and that I had signed their card, but that that was as far as I was going with it, and he told me that Herman Pool had brought a card for him to sign and he had signed it and he says, "What do you think about the thing?" I said, "Well, I am not going any farther with mine", so he says, "I don't believe I will either." He says, "Do you think Herman will give me my card back?" And I told him I would ask him for it if I was in his place. So, he told me that later on, the next day I believe it was, that he did ask Herman for his card and Herman gave it to him.

Trial Examiner Mouritsen: Let us stay with the first conversation until we have completed that.

The Witness: That is all we had to say.

Q. (By Mr. Yeager): That was all the conversation you had on the 27th? A. Yes. [904]

(Testimony of Thomas Franklin Herring.)

Q. Did you have any other conversation concerning an employees union?

A. Yes. I saw George the next day, I believe it was, at the plant and I asked him if he got his card back from Shorty and he told me that he had. So then I asked George what he thought about us forming an association of the members and he said, "Well," he says, "probably it would be a good thing", and he asked me if I thought we could and I told him I didn't see why we couldn't, because there was lots of the members that wasn't at this meeting on the two nights before.

Q. Anything else said?

A. George told me if he thought we could and I wanted to he would help me.

Q. Did you go ahead then and assist in the organization of the Association?

A. Yes, sir, I did.

Q. The Employees Association? A. Yes.

Q. What did you do in that respect?

A. Well, I had a talk—I talked to a boy on the Kramer Bakery truck, Leo is his name—I don't know whether that is his first name or last name, but that is the name I knew him by. He is a delivery man at Holtville or was at that time, and I asked him how their— [905]

Trial Examiner Mouritsen: Can you fix the time—about when did you do this?

The Witness: Well, I believe it was on the 27th of September.

(Testimony of Thomas Franklin Herring.)

Trial Examiner Mouritsen: Before you had the second talk with Harlan or after?

The Witness: Yes, it was before.

Q. (By Mr. Yeager): Go ahead, tell what discussion you had.

A. I asked him how their union was going with the bakery and he told me it was going along all right; that they had a little trouble, I believe—their management wanted them to sign up with the A. F. of L., but they didn't see fit, so he said that they were then getting along all right.

Q. And then the next day you talked to Harlan?

A. Yes.

Q. All right, what did you do after your talk with Harlan?

A. Well, I believe it was—I talked with Harlan in the morning and in the afternoon I called Mr. Osborne.

Q. Were you acquainted with Mr. Osborne at that time?

A. Well, yes, I knew of him—not personally acquainted, but I knew the gentleman when I saw him.

Q. How did you happen to telephone him?

A. Well, Kramer's Bakery man told me that he could give me the dope that I needed—that Mr. Osborne would tell me how to get it started and what I could do and what we [906] couldn't do, and that he would help us with it.

Q. And so when was it that you telephoned Mr. Osborne—what day was it?

(Testimony of Thomas Franklin Herring.)

A. Well, I believe it was on the 27th or the 28th.

Q. And where did you telephone him?

A. At the Associated Farmers at El Centro.

Q. And what did you say over the telephone and what did he say to you?

A. Well, I told Mr. Osborne who I was and told him what we wanted—that we wanted to start an independent union, and he asked me what help he could be, and I told him that we didn't know how to go about it, and so he told me then that he would come over and see me.

Q. And did he come over to see you?

A. He took my address and came to see me at my house one night. That was along about the 29th of September, I believe.

Q. And who was present at your house when he arrived there?

A. Well, my wife was there when Mr. Osborne didn't come in. We was out in the yard talking.

Q. And did he have anybody with him?

A. No.

Q. What conversation did you have with him on that evening? What did he say and what did you say?

A. Well, I told him that we had labor trouble there and [907] that part of them was wanting to join the A. F. of L., and part of the boys wasn't, and that I thought we could get a union of our own started, among the employees, and I figured it would be better because we would be the only ones interested in it, and he asked me what I wanted him to do,

(Testimony of Thomas Franklin Herring.)

and I told him that we didn't know how to get started, and I understood that he could help us get started.

Q. What did he say?

A. Well, he asked me the employees names that were interested in it and I told him.

Mr. Ryan: Interested in what?

The Witness: Interested in starting an independent union. And I told him. Then I had only talked with one and that was George Harlan, but several of the boys hadn't been to this meeting on the 26th, and as I recall it he asked me some of the employees names and I gave him some of them.

Q. Do you recall the names that you gave him?

A. Well, I gave him George Harlan, Shorty Pool——

Trial Examiner Mouritsen: Is that Herman?

The Witness: Yes, Herman Pool, and Bailey Pool, and Bill Morgan and Roy Davis.

Of those I don't know which ones Mr. Osborne saw, but he left my house that evening late and I didn't see him any more for a couple of days, I believe. [908]

Q. (By Mr. Yeager): Did he make any arrangements or did you make any arrangements with him for a subsequent meeting that night?

A. No. He told me to get around among the boys and see how many of them was interested in the private union, and he did say he would see me later but he didn't say when.

(Testimony of Thomas Franklin Herring.)

Q. And then what else did you do toward organizing the Employees Association?

A. Well, from the 26th—starting on the 27th on the job I was talking to the boys about it and some of them thought it was all right. They had joined the other, but they thought they would stay that way, being as they went that far.

Henry Fredenburg and Pete Drinkard admitted that they would probably just as soon pay one as the other, but they had started with the A. F. of L. and signed up with them, so they suggested they would stay that way.

I told Mr. Davis about it and Mr. Davis told me that it didn't make any difference to him, that he would go with the majority.

Mr. Petersen: What date was that you talked to Davis?

The Witness: I can't recall just what date, but I believe it was the 28th or 27th, along in there. It was early after this union meeting.

Q. (By Mr. Yeager): You discussed the matter *than* with [909] the various men on the job?

A. I did.

Q. Then did you call any meeting—arrange any meeting for the fellows to get together?

A. Well, not for about, oh, I believe a week—it was probably around the 1st of October or shortly after.

Trial Examiner Mouritsen: A week after the 26th?

(Testimony of Thomas Franklin Herring.)

The Witness: Yes, after the 26th. It was approximately a week after that we had our first meeting.

Q. (By Mr. Yeager): And did you arrange that meeting? A. Yes, sir.

Mr. Ryan: Object to leading the witness like that.

Trial Examiner Mouritsen: Overrule the objection.

Q. (By Mr. Yeager): Where was that meeting held?

A. At George Harlan's home.

Q. And who was notified to come, if anybody?

A. Well, Bill Morgan, Simon Hogue, Jack Johnson.

Trial Examiner Mouritsen: How did you know this? Did you notify them?

The Witness: Yes, sir.

Trial Examiner Mouritsen: Those were employees whom you notified?

The Witness: Yes, sir; Pete Drinkard, Henry Fredenburg and Mert Stout. I believe that is about all I can recall that was at the first meeting. [910]

Q. (By Mr. Yeager): Were there any other notified? A. Mr. Osborne was.

Q. What? A. Mr. Osborne was.

Q. Who notified Mr. Osborne? A. I did.

(Testimony of Thomas Franklin Herring.)

Q. Were there any other employees notified?

A. Well, as I recall it there was about eight of us there, but those are the only names that I can remember notifying.

Q. When did this meeting take place?

A. Well, it was around about the 1st of October or shortly afterward.

Q. And will you tell what happened at that meeting as best you can recall?

A. Well, I introduced Mr. Osborne to some of the boys that wasn't acquainted with him, and I told them that he would help us to get our union started if we were in favor of one; that he would be able to tell us what we could do as far as setting up a union of our own was concerned.

Mr. Osborne talked, oh, I would say we were there about an hour, and Mr. Osborne talked to different ones there and he left and told us if we wanted to go further with it, why, to get a little better organized among the employees and see what we really wanted to do, and that if we needed him again, call him and let him know. [911]

Q. And did you hear what Mr. Osborne discussed at that meeting? Were you present while he was talking? A. Yes.

Q. And what did he discuss with the men?

A. Well, he told us that there was at least one of those independent unions in operation and they seemed to be going along all right, having no trouble, and that he thought we could have one there.

(Testimony of Thomas Franklin Herring.)

Q. Did he tell you anything about the mechanics of forming it at that meeting?

A. No, I don't recall that he did.

Q. Was there any definite action taken at that meeting—any vote or anything? A. No.

Q. What happened after that, Mr. Herring, in regard to organizing the Employees Association?

A. Well, on our job, when we would meet, why, we would talk about it and talk to different ones of the employees that wasn't there on that night, and the best I recall we decided we would go through with it and try to start our own union.

Q. And did you have any further meetings?

A. Yes, sir.

Q. And where was the next meeting?

A. They had a meeting at Mr. Stout's — Mert Stout's, [912] but I don't recall when that was. I wasn't present at the meeting. I don't know whether that was the next one or the next one was at George Harlan's. Most of them was at George Harlan's place.

Q. Do you recall any other meetings that you attended at George Harlan's place?

A. Yes. The next one that I attended, why, he told me that they had elected the officers while I was gone; that they had a meeting and elected the officers and that I was vice-president.

Q. When was this meeting at George Harlan's, the one that you did attend?

A. The second one that I attended?

Q. Yes?

(Testimony of Thomas Franklin Herring.)

A. Well, I will take that back. The second I attended at George Harlan's, why, Mr. Osborne was there and he showed them how to draw up their minutes and get started on their book work and then he left. He was only there about 20 minutes, I would say, that night.

Q. Do you recall——

A. That was the second.

Q. Do you recall when it was that that took place?

A. I think that was around, probably, the 15th of October, or something like that.

Q. Was that before or after this meeting when the officers [913] were elected? A. Before.

Q. At this meeting at George Harlan's, was there any official action taken—any election or vote of any sort? A. No, not at this second meeting.

Q. Do you recall who attended that meeting?

A. (No answer.)

Trial Examiner Mouritsen: We will take a short recess at this time.

(Short recess.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Yeager): Do you recall who attended that meeting? The meeting you went to at George Harlan's house, the second meeting you had at George Harlan's house?

A. Well, Mr. Osborne was there and he showed us how to start our minutes off and our books.

(Testimony of Thomas Franklin Herring.)

Q. Do you recall who of the employees were there or if you don't recall say so?

A. George Harlan and myself was there. We are the only ones which I can remember that was there, but there was about eight of us, I believe.

Q. Did Mr. Osborne have anything else to say except in regard to how to form your minutes?

A. No. [914]

Q. Did he stay the whole meeting?

A. No, he didn't. He stayed, oh, around 20 or 30 minutes.

Q. What else did you do at that meeting besides work out your minutes?

A. That is all, I believe. We stayed around there and talked a little while and then went home.

Q. Did you have any subsequent meetings?

A. No, not that I know of. I was away a lot of the time at that time. My wife was in Los Angeles sick and I was up there a lot and they had several meetings that I knew nothing about.

Q. Were you present at any of these negotiations with Mr. Willard that have been testified to?

A. Yes, sir.

Q. And what was the first one that you were present at?

A. I believe the first one that we had with him—I don't recall the date, but it was in the early part of October.

Mr. Petersen: Which part?

The Witness: Early part of October—before the 15th of October, I would say.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): And who else was with you at that meeting?

A. I was trying to remember when the meeting was. It was George and Mert and myself—Mert Stout and George Harlan, but I don't recall just the date of that meeting. [915]

We had several meetings with Mr. Willard before anything was definite.

Q. And at that time, the time you had that first meeting that you recall with Mr. Willard, had you elected your officers? A. Yes, sir.

Q. At any of these meetings that the Employees Association had, was a bargaining committee elected?

Trial Examiner Mouritsen: At which you were present.

The Witness: I don't believe I was present when they elected the bargaining committee. They did have one, but I don't know what meeting it was elected at.

Q. (By Mr. Yeager): Were you notified whether you were on that bargaining committee?

A. Well, there was something said about they had elected a bargaining committee of two and that the officers was to act with them.

Q. Were you elected an officer? A. Yes.

Q. And what office? A. Vice-president.

Q. And were these other men that attended this first meeting with Mr. Willard officers of the Association? A. Yes, sir.

(Testimony of Thomas Franklin Herring.)

Q. What offices did each of those men hold? [916]

A. President and secretary, I believe.

Q. Who was president?

A. George Harlan.

Q. And who was secretary?

A. Mert Stout.

Q. And what transpired at this first meeting with Mr. Willard? First, was anybody else with Mr. Willard when you met with him? A. Yes, sir.

Q. Who? A. Mr. Osborne.

Q. And where did that meeting take place?

A. In Mr. Willard's office.

Q. What conversation did you have with Mr. Willard at that time?

A. Well, Mr. Osborne told Mr. Willard that the employees had decided to form an association of their own and that this was the bargaining committee, and we wanted to bargain with him on the wages.

Q. And then did you take part in the conversation? A. Well, I don't recall that I did.

Q. Who did the talking for your group?

A. Well, there wasn't much talking did and what talking there was, I think, George Harlan did it.

Q. Was anything accomplished at that meeting in the way of [917] an agreement?

A. No, there wasn't.

Mr. Petersen: I object to that as being a conclusion of the witness. Let the witness tell what

(Testimony of Thomas Franklin Herring.)
happened and who said what and let it go in like that instead of his conclusion.

Trial Examiner Mouritsen: I think it would be better to find out what did occur.

Q. (By Mr. Yeager): Can you tell us what did occur—what was said between the various parties?

A. Well, the best I recall it, Mr. Willard wanted to know what we wanted and what working conditions we wanted, and we didn't — the best I recall it we didn't have much drawn up and he suggested that we adjourn until we drew up what we wanted and have another meeting with him, and then we could work out something, and if we didn't have it in writing why, we couldn't.

Trial Examiner Mouritsen: Did anything else occur that you recall at that meeting?

The Witness: I don't believe so.

Q. (By Mr. Yeager): Then did you have any papers drawn up? A. Yes, we did.

Q. And did you see to having those drawn up?

A. Yes. George Harlan and myself, I believe it was.

Q. And who did you have draw them up? [918]

A. Mr. Whitelaw.

Q. And did you have in mind or did you write out any papers?

Mr. Ryan: Wait a minute, let us not lead this witness too much.

Mr. Yeager: All right, strike that out.

Q. (By Mr. Yeager): Did you meet with Mr. Whitelaw? A. In his office here in El Centro.

(Testimony of Thomas Franklin Herring.)

Q. And how long after this meeting with Mr. Willard was it that you went up there?

A. Well, I believe it was the next day, possibly a day or two afterwards.

Mr. Petersen: May we still get some date fixed? The witness hasn't fixed any date.

Trial Examiner Mouritsen: Can you fix the date when this took place?

The Witness: Well, I said back there somewhere, I believe, we had the first meeting about the 15th of October with Mr. Willard and this is still what we are talking about, isn't it, the first meeting?

Trial Examiner Mouritsen: I think the question now is when you saw Mr. Whitelaw.

Mr. Smith: He said the next day or two after the meeting.

Trial Examiner Mouritsen: The day after the meeting? [919]

The Witness: Yes.

Q. (By Mr. Yeager): And that took place in his office? A. Yes, sir.

Q. Was there anybody else along besides Mr. Harlan and Mr. Stout and yourself?

A. I don't believe Mr. Stout was there.

Q. Just you and Mr. Harlan? A. Yes, sir.

Q. What took place at that meeting with Mr. Whitelaw? What did you men say and what did Mr. Whitelaw say?

A. We told Mr. Whitelaw our business up there and told him who we were.

(Testimony of Thomas Franklin Herring.)

Mr. Ryan: What did you tell him?

Q. (By Mr. Yeager): Just tell what you told him.

A. I believe George introduced himself and then introduced me and we told him what we wanted.

Trial Examiner Mouritsen: Tell us what you said. Tell us as nearly as you can recall what you said and what Mr. Whitelaw said. When you say "We told him what we wanted", that doesn't mean anything to me. Tell us what you did and what you said.

The Witness: We told Mr. Whitelaw we were going to start an association of the Holtville Ice Company employees, and we wanted him to draw up the papers for us. He asked us if we knew what we wanted in those papers, and we told [920] him we didn't have very much of an idea of it; that we figured that he could help us more than we could help ourselves because he was acquainted with labor problems.

He told us then that he had a copy of the Kramer's employees contract in his office and looked it up and he gave it to us and told us we could show it to our employees and let them see what they were working under, and if that suited us he would draw us up the same kind of a contract, only to fit our employees of the Ice Company.

We took it back to the employees and that is all we did in the office that day.

Trial Examiner Mouritsen: What did he give

(Testimony of Thomas Franklin Herring.)

you? You say he gave you a copy of Kramer's what?

The Witness: By-laws, and I don't know whether it was their contract or not with the company, but it was a copy of their by-laws that they were working under in their union.

Q. (By Mr. Yeager): Mr. Herring, was this conversation that you have referred to with Mr. Whitelaw, one that you had after having met with Mr. Willard?

A. No, I believe that was before we met with Mr. Willard.

Q. You met with Mr. Whitelaw more than once, didn't you? A. Twice.

Q. This conversation you are referring to——

A. Maybe three times.

Q. This conversation that you are referring to now took [921] place before your meeting with Mr. Willard, is that right?

Mr. Petersen: I am going to object to that as being very leading and suggestive.

Trial Examiner Mouritsen: Objection overruled.

The Witness: Well, it seems like we had a meeting with Mr. Whitelaw before that, but I don't recall of doing anything about it, but at this particular meeting was, I know, was the next day after we met with Mr. Willard.

When we met with Mr. Willard we didn't have any papers to work under and that was our purpose in going to see Mr. Whitelaw.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): When was it you met Mr. Whitelaw again?

A. Well, it was several days but I couldn't place a date on it.

Q. Several days after this first meeting?

A. Yes, sir.

Q. And who went up there that time?

A. Well, I don't believe I was in that meeting they had with him the second time. I believe just George Harlan came over after some papers and to tell him what we wanted, and I wasn't there.

Q. At this meeting you had with Mr. Whitelaw were any papers furnished to you that would act for a basis for an agreement with Mr. Whitelaw? [922]

A. No, they got those later. [923]

Q. (By Mr. Yeager): Mr. Herring, you have been present here when there was testimony concerning the clause in the agreement with Mr. Willard, in regard to withholding the dues out of the salary for each payroll period? A. Yes.

Q. You have heard that testimony? [926]

A. Yes, sir.

Q. Are you acquainted with the discussion that was had concerning that clause?

A. Yes, sir, I am.

Q. Whose idea was it to have that?

Mr. Petersen: To which we object.

Q. (By Mr. Yeager): The clause in the agreement.

Trial Examiner Mouritsen: I will sustain the objection.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Yeager): Who proposed it?

A. That they hold out the checks?

Q. Yes. A. The Employees Association.

Q. And was that clause discussed with Mr. Willard? A. It was.

Q. At a meeting that you attended?

A. Yes, sir.

Q. And what meeting was it?

A. I don't recall, but this particular meeting, why, we wanted——

Trial Examiner Mouritsen: Just a minute. Let us find out as nearly as we can the date of the meeting.

The Witness: Well, we had meetings for a couple of months or six weeks or so, and those meetings must—it was one of the last meetings that we had with him. I can't recall the date. [927]

Trial Examiner Mouritsen: You were present only in Mr. Whitelaw's office on the one occasion?

The Witness: That is right.

Trial Examiner Mouritsen: And on that occasion no mention was made of any contract or proposal to be presented to Mr. Whitelaw?

The Witness: No.

Q. (By Mr. Yeager): What discussion did you have with Mr. Willard concerning that clause?

Trial Examiner Mouritsen: Let us find out the date. You say there were how many meetings?

The Witness: Between five and seven meetings.

Trial Examiner Mouritsen: You say there were between five and seven meetings, is that right?

(Testimony of Thomas Franklin Herring.)

The Witness: That is right.

Trial Examiner Mouritsen: But you can't fix the date when the first one was held nor when the last one was held, is that right?

A. Well, the first one was held about, somewhere near the middle of October, I believe, and the last one was along in November.

Trial Examiner Mouritsen: Which part of November?

The Witness: Well, I would say it was getting along toward the last of November before we had a final agreement with Mr. Willard and the contract was signed. [928]

Trial Examiner Mouritsen: Did you attend all five or seven of these meetings?

The Witness: No, I only attended about three of them. I attended the first one and then along, at the last, I believe it was before I came in on any more of them.

Trial Examiner Mouritsen: Was this proposal discussed at the first meeting?

The Witness: No, it was not. It must have been around the 1st of November—somewhere near that time, this meeting that this was discussed.

Trial Examiner Mouritsen: Were you present at that time?

The Witness: Yes, sir.

Trial Examiner Mouritsen: Well, did I understand you correctly to say you were present at the first one and then near the last of the meetings which were held in the latter part of November?

(Testimony of Thomas Franklin Herring.)

The Witness: Something like that, yes.

Trial Examiner Mouritsen: But you think the meeting where this was discussed and you were present at that meeting, was held around the 1st of November, is that right?

The Witness: I believe so. I was at the meeting.

Q. (By Mr. Yeager): What was the discussion—what did Mr. Willard say concerning that clause?

A. Well, we wanted it put in the contract for the company [929] to hold out the dues each month and that would save a lot of trouble for the boys, because they—I mean the ones that would have to take care of collecting the dues, Mr. Stout, and he figured it would take a lot of his time to go and see each one, and they were working different shifts, and so he thought it would simplify matters if the company would get a signed agreement from the employees to hold out this from their checks on the 1st or the 15th of the month, as the paydays come due, what they owed, and at first Mr. Willard did not want to do that. I don't know for what reason but he didn't, and he finally did consent to doing it.

Q. Now, are you acquainted with the clause in that agreement that requires an employee to become a member of the Association within 15 days after he is hired?

A. Well, I know it is in there, yes, sir.

Q. Do you know who proposed that clause?

A. Well, the Association at a meeting.

Q. And were you present at that meeting?

A. I don't recall that I was.

(Testimony of Thomas Franklin Herring.)

Q. How do you know the Association proposed it?

A. Well, I was under the impression that they did.

Mr. Ryan: I object to that and move that the answer be stricken.

Mr. Petersen: Both answers.

Trial Examiner Mouritsen: I will deny the motion. [930] I think it is pretty clear. You can go into that with somebody else.

Q. (By Mr. Yeager): Was that part of the agreement discussed with Mr. Willard?

Trial Examiner Mouritsen: At any meeting where you were present?

The Witness: No, I don't believe so. It was in our final agreement but I don't know what meeting it was discussed at.

Q. (By Mr. Yeager): You don't recall Mr. Willard discussing it at any meeting you attended?

A. No, I don't.

Q. Were there any more meetings with the A. F. of L. Teamsters Union held that you attended?

A. No.

Q. And did you ever see any representatives of the A. F. of L. Teamsters Union out at the Holtville Ice and Cold Storage Company subsequent to this time that Mr. Neff was out there?

A. No, I didn't.

Mr. Yeager: I believe that is all.

Mr. Ryan: Will you mark this for identification?

(Testimony of Thomas Franklin Herring.)

(The document referred to was marked as Board's Exhibit No. 19, for identification.)

Mr. Smith: I have one question, Mr. Herring, that [931] I would like to ask.

Cross Examination

Q. (By Mr. Smith): This man Gilliland spoke to you about bringing the Ice Company employees into a union, is that right? A. Yes.

Q. Did he say whether he proposed an independent union or whether it was to be affiliated with the A. F. of L.?

A. No, it was to be an independent union.

Mr. Petersen: On that same subject, may I ask a question so we won't have to go over it again.

Q. (By Mr. Petersen): Mr. Gilliland gave you the address of 795 Main Street to attend the meeting? A. Did he?

Q. Yes.

A. I don't recall what address but we looked the address up that night, the four of us, and that is where we found it and that was the A. F. of L. Hall.

Q. Who told you to go up there to Eighth and Main Streets? Did Mr. Gilliland tell you that was where the meeting would be held?

A. Yes, sir, he did.

Mr. Petersen: That is all. [932]

Q. You did not know Mr. Whitelaw until you

(Testimony of Thomas Franklin Herring.)

got up into [934] his office and George Harlan introduced himself and introduced you?

A. No, I didn't.

Q. Now, isn't it a fact that George or, that Mr. Hugh Osborne, when he had talked to you in the early part of September or early part of October, had advised you that if you needed any help you might get it from Mr. R. B. Whitelaw?

A. Yes, sir.

Q. And it was pursuant to that that you and Mr. George Harlan went up to R. B. Whitelaw's office?

A. Yes, sir.

Q. Mr. Herring, what was the nature of your business for going up there on that particular occasion to Mr. R. B. Whitelaw's office?

A. We wanted papers drawn up for us to start our association.

Q. And when you got up to the office of Mr. Whitelaw, will you tell us just what was said and done at that time?

A. We told Mr. Whitelaw that we were trying to start an association of our employees at the Holtville Ice Company, and that we didn't know what we was trying to do or how to go about what we were trying to accomplish, and that we had been informed that he was the man that could tell us what we could do and that he would draw up some papers for us; that we understood—— [935]

Q. Did you tell him that Hugh T. Osborne—— Mr. Yeager: Let him finish his answer.

Trial Examiner Mouritsen: Let him finish.

(Testimony of Thomas Franklin Herring.)

Q. (By Mr. Ryan): Go ahead.

A. We told him we understood he had drawn up the Kramer Bakery agreement with their men and we wanted something similar to that.

Q. Did you explain to him that you had gotten this information from Hugh T. Osborne?

A. Yes, we did.

Q. And then what did Mr. Whitelaw say to you?

A. Well, he told us that he had a copy—I believe it was the by-laws, of the Kramer Bakery, that they were using, and to start with, why, he showed us those and told us if we wanted to we could have them and take them back to our members and see what they thought of those by-laws, and if there was any changes to be made in them, to write the changes we wanted made to fit our agreement, and bring them back and then he would draw them up for us.

Q. And did you then take these by-laws of the Kramer Baking Association to Mr. Whitelaw, take them back to the *back to the* employees of the company, and discuss them? A. Yes, sir.

Q. And were any changes made in them in your discussions among the other employees? [936]

A. Well, they were to fit our working agreement but I don't recall what—they weren't the same as the Kramer's, however.

Q. You changed them somewhat?

A. Yes, sir.

Q. Then did you agree to the changes among yourselves? A. Yes.

(Testimony of Thomas Franklin Herring.)

Q. What did you do then with them? Take them back to Mr. Whitelaw?

A. I believe Mr. George Harlan was the man that took them back.

Q. You designated Mr. Harlan to take them back? A. Yes, sir.

Q. And you were not present at that time, as I understand it? A. Yes, sir.

Q. Now, when your Employees Association first went into a meeting with Mr. Willard, I understood you to say you were present at that time?

A. I was what?

Q. You were present at the first meeting?

A. Yes.

Q. At that time did the Employees Association have any proposals in writing to give Mr. Willard about bargaining?

A. I don't recall whether we did or didn't. We drew up so many and changed them for different items that I don't [937] recall the first meeting, whether we had anything drawn up or whether we didn't.

As I recall it there was three of us present at the first meeting besides Mr. Osborne.

Q. Did you testify that after talking to Mr. Harlan or Mr. Willard on this first meeting, the first meeting that you went in to see him when Mr. Osborne—Mr. Osborne was also present, was he?

A. The first meeting he was.

Q. And Mr. Harlan was present also with you and Mr. Drinkard, is that right?

(Testimony of Thomas Franklin Herring.)

A. Mr. Stout, I believe.

Q. I believe you testified that after discussing wages or various working conditions, Mr. Willard made the suggestion to take it back and put it down in writing, is that right? A. That is right.

Q. Then is it a fact that the Employees Association went back to Mr. Whitelaw and got him to draw or draft up some proposals in writing?

A. Yes, sir.

Q. Now, do you know—were you present at that time in Mr. Whitelaw's office?

A. I don't believe that I was.

Q. Before going up to Mr. Whitelaw's office did you have [938] a meeting as to what to do there?

A. Yes, sir.

Q. Where did that meeting take place?

A. George Harlan's home.

Q. About how long after this first meeting in Mr. Willard's office that you told us about?

A. Oh, I would say a couple of days.

Q. Did you take up at this meeting at Harlan's home the question of drafting some written proposals? A. Yes, sir.

Q. What did you decide to do in that regard?

A. Well, we drew up approximately what we wanted and the working conditions that we wanted.

Just for a beginner we wanted something to work on and figured we would work to it, which we did.

Q. Had you ever had any experience before in drafting such proposals? A. No.

(Testimony of Thomas Franklin Herring.)

Q. How were they drafted, in pencil, or how?

(No answer.)

Trial Examiner Mouritsen: Who did it—who wrote them up?

The Witness: I would not say for sure who drew those up, but they weren't in writing, they were typed off.

Q. (By Mr. Ryan): Were they typed at the meeting? [939] A. No, they weren't.

Q. Do you know who typed them?

A. No, I don't know who typed them.

Q. Then do you know whether or not after you had discussed your proposals at that meeting—you say you typed up some suggestions that you had in that regard. Do you know whether or not they were taken up to Mr. Whitelaw's office for further drafting? A. I believe that they were.

Q. You were not present at that time, is that right? A. No, I wasn't.

Trial Examiner Mouritsen: Was it Mr. Harlan who took it up with Mr. Whitelaw?

The Witness: I believe the second time Mr. Harlan went back to Mr. Whitelaw's office and he took the copy he had of Kramer's working agreement and our own with him, and told him what we wanted. There was nothing said in this about wages or anything like that. It was just an agreement with Mr. Willard.

Q. (By Mr. Ryan): Had you gotten a copy of the Kramer Baking contract covering working hours and conditions some time previous to that?

(Testimony of Thomas Franklin Herring.)

A. Well, it wasn't their contract that we had.

Q. Just what was it? I believe you already stated you had the by-laws. [940]

A. I was talking about the—it was about their by-laws and not their contract. That was all we had of Kramer's, was their by-laws.

Q. And then at the time you met at Harlan's home after this first meeting with Willard, you didn't have any other contract to follow?

A. No.

Q. Then did you thereafter at any time get a copy of any other contract?

A. No, we didn't.

Q. Never did?

A. No, Mr. Whitelaw worked that up for us.

Q. He did that for you? A. Yes, sir.

Q. (By Mr. Ryan) Mr. Herring, I show you what is in evidence as Respondent Ice Company's Exhibit 3, and ask you whether or not you ever saw that before (handing exhibit to the witness).

A. Yes, sir.

Q. When did you first see that?

A. I don't recall the date.

Q. Do you know where it was obtained or who prepared it?

A. I was under the impression that Mr. Whitelaw prepared this part of it, at least, and this writing here, I believe possibly, some of that was George Harlan's, and some of it [941] was Mr. Willard's.

Trial Examiner Mouritsen: Who was the last one?

(Testimony of Thomas Franklin Herring.)

The Witness: George Harlan, I believe, wrote in something here that we wanted put in our contract, is the way I recall it, and I believe this is Mr. Willard's here that he wrote in.

Q. (By Mr. Ryan): You are referring now to the white sheet in longhand, is that right?

A. Yes, sir.

Q. Which is the second sheet.

Mr. Smith: You mean the part written in pen?

Mr. Ryan: Yes, pen in longhand.

The Witness: I don't know who prepared this part of it here.

Mr. Smith: You did not see Mr. Willard write that?

The Witness: No, I didn't.

Q. (By Mr. Ryan): And you don't know who or, do you know whose writing it is that appears on the yellow sheet which is a part of Respondent Ice Company Exhibit 3 in ink?

A. No, I don't know whose writing that is.

Trial Examiner Mouritsen: Mr. Herring, did you see this Respondent Ice Company's Exhibit No. 3 at a conference with Mr. Willard first, or where?

The Witness: I believe we had that at a meeting of the Association, I believe, first, before we took it to Mr. Willard. [942]

Q. (By Mr. Ryan): I believe I understood you to say that Mr. Whitelaw typed the typewritten part of it up, is that right? A. Yes, sir.

(Testimony of Thomas Franklin Herring.)

Q. And then after you had gotten this first document in writing or typed up, the Company's Exhibit 3, which you looked at, was there any subsequent document after that that you bargained on—any document after that?

A. Well, I believe there were but I was away along about that time and I don't know anything about that.

Q. Mr. Herring, I believe you stated that you had had a conversation some time in the fall of 1941 or about that time, with someone named Leo, and you couldn't remember his last name, an employee of the Kramer Baking Company. Is that right?

A. That is right.

Q. About when was that conversation?

A. Well, it was along about the time when we met at the union hall over here on September 26th. I believe it was [944] the next day or so.

Q. Where did you happen to meet?

A. Downtown on the streets of Holtville.

Q. Holtville? A. Yes, sir.

Q. Had you known him before?

A. Yes, sir.

Q. And was he a driver and deliverer of ice?

A. No, he was a bakery truck driver.

Q. What was that conversation you had with him on that occasion?

A. Well, I had read in the paper where they had formed an association a few months back and I didn't know whether it was still going or not, so I asked him if it was and he told me that it was still

(Testimony of Thomas Franklin Herring.)

going all right, and that they were well satisfied with it.

Q. What else did he say to you or you say to him?

A. Well, I told him I was in favor of us having one there and he said he didn't see why it wouldn't work for us as well as it did for them. That was all that we had to say.

Q. He suggested, did he not, I believe you said something about him suggesting—that you get in touch with Mr. Osborne? A. Yes.

Q. Did he tell you to get in touch with him—where did [945] he tell you to get in touch with him?

A. He didn't tell me.

Q. Had you heard of Mr. Osborne before that?

A. Yes, I had.

Q. In connection with the Associated Farmers?

A. Yes.

Q. And you knew where the Associated Farmers office was in the court house, did you?

A. No, I didn't.

Q. Where did you call Mr. Osborne when you called him?

A. I just looked him up in the telephone book and called him.

Q. Where did you reach him on that occasion?

A. I believe he was at the Associated Farmers.

Q. In the court house?

A. I put in a call for him and I don't think he was there at first, and the lady said, as well as I

(Testimony of Thomas Franklin Herring.)
remember, told me when he would be back, and I called later and got him.

Q. What was the conversation that you had with him there then when you got in touch with him? Did you have a conversation with him over the telephone first?

A. Oh, not very much. I told him what I wanted and he told me he would come over.

Q. What did you tell him you wanted?

A. I told him we wanted to start an association of our own [946] there at the plant among the members, and I asked him if he could help us and he said he could and that he would come over to see me. He didn't say when, but he said, "I will come over to see you about it."

Q. Did he come over and see you after that?

A. I believe it was that night that he came over.

Q. That was to your home, was it?

A. Yes, sir.

Q. And who was present at your home, if any-one, besides you and Mr. Osborne?

A. No one.

Q. Will you tell us what the conversation was at that time?

A. Well, I went on to tell Mr. Osborne that we wanted to start our union there and then I wondered if he couldn't help me, so he asked me how many of the boys was in favor of it and I told him that I hadn't talked to very many of them, but we had had some words about it three or four months back, and at that time, why, they did talk favorable and I

(Testimony of Thomas Franklin Herring.)
thought some of them still would be, so I gave him some of the employees names and he told me to work on it.

Q. And you told him, didn't you, that the night previous or a night or two previous a number of the men had gone down and signed up with the A. F. of L. Teamsters Union?

A. I believe I did but I wouldn't say for sure that I [947] mentioned that to him.

Q. What did Osborne say?

A. Well, he told me to work on it; that he would see some of these men that I had mentioned and see how they felt about it, and he would see later how the thing got along, and he would see me again, but he didn't say when.

Q. When was it that he suggested you seek advice from Mr. R. B. Whitelaw?

A. I believe it was that night or the next meeting that I had with him, but I wouldn't say for sure.

Q. How long was it after that first meeting that you again had a conversation or had an opportunity to meet with him, after the first time you met him at your home?

A. Well, within a week later or less.

Q. Did he come to see you on that occasion?

A. Yes. [948]

Q. (By Mr. Ryan): Will you tell us, Mr. Herring, how you happened to see Mr. Osborne about a week after that time at your home?

A. I didn't see him at my home the second time.

(Testimony of Thomas Franklin Herring.)

Q. I mean after you had first seen him at your home. A. (No answer.)

Q. I believe you said you saw him about a week later.

A. Well, he saw me one day at the plant.

Q. Go ahead.

A. I was at the plant and he dropped by. I don't know whether he dropped by to see me there or not, but he did mention how I was getting along and I told him I thought all right, that I had saw several of the boys and knew how they felt on it.

I gave him some names then of some of the boys that were in favor of it.

Q. That you thought were in favor of it?

A. Yes.

Mr. Petersen: Let us hear the names.

Q. (By Mr. Ryan): Who were they?

A. George Harlan and Bailey Pool and Simon Hogue and Lloyd Gettle and Bill Morgan.

Q. Is that Bill Morgan the same as W. T. Morgan? A. I think so.

Q. And how soon again was it after that, if at all, you [949] saw Mr. Osborne?

A. Well, it was at our first meeting after that that he was there.

Q. That was the meeting at where—where did that meeting take place?

A. At George Harlan's home.

Q. What was discussed at that meeting—who was at that meeting besides you?

A. Pete Drinkard was there, George Harlan,

(Testimony of Thomas Franklin Herring.)
myself, Simon Hogue, Lloyd Gettle, Jack Johnson.
As I recall they were there. Possibly more.

Q. Was Mr. Osborne there?

A. Yes, he was.

Q. What did he say at that meeting, if anything?

A. Well, he was introduced to the boys that wasn't acquainted with him.

Q. Who introduced him? A. I did.

Q. How did you introduce him and just what did you say to the boys? A. "Mr. Osborne".

Q. Did you tell them who Mr. Osborne was?

A. Well, I don't recall that I did. I told them that he would be able to help us on our association. That is all I remember telling them. I don't think I mentioned [950] him as being with the Associated Farmers.

Q. You don't know that you did?

A. I don't know that I did or didn't, because I don't remember.

Q. After you introduced him to the men present at that meeting, did he proceed to say anything?

A. Yes; he got up and said that he understood that we was wanting him to help us start the Association of Employees. He said he would be glad to help us in any way that he could and he would help us to elect our officers, if we were ready and thought we wanted to, and so he did that, and then he left.

Q. You say he did that. How did he do it?

A. He told us which officers to elect.

Q. What did he say in that regard?

A. I don't understand what you mean.

(Testimony of Thomas Franklin Herring.)

Q. What did he say in that regard? You say he told you which officers to elect. Just what did he say?

A. He told us to get a president and vice-president and secretary.

Q. Did he tell you or explain to you how to nominate them and vote for them? A. Yes.

Q. Anything else done at that meeting that night? A. I don't believe so. [951]

Q. Then when did you see Mr. Osborne again after that?

A. I believe the first meeting we had with Mr. Willard in his office, Osborne was there. There was Mr. Osborne and I believe Mert Stout and George Harlan and myself.

Q. You and Mr. Stout and George Harlan went in to see Mr. Willard, did you, at that time?

A. Yes.

Q. What was your purpose for going in on that occasion?

A. Well, we were just kind of acting as a bargaining committee.

Q. You went in to try to start bargaining?

A. Yes.

Q. Where did that meeting take place?

A. In Mr. Willard's office.

Q. And when you got in there Mr. Willard was there, was he? A. Seemed like he was.

Q. Was he there?

A. No; he was out in the garage and then he came in.

(Testimony of Thomas Franklin Herring.)

Q. When you got in there was Mr. Osborne in the office?

A. I would not say for sure that he was. He appeared on the scene at the meeting but I wouldn't say just when he came in.

Q. Do you know how he happened to be there?

A. No, I don't.

Q. And I believe you stated, or, did you state on direct [952] examination, that he introduced you men to Mr. Willard then as representatives of the Employees Association?

A. Well, I don't remember saying that myself, but I heard it as someone else's statement. I don't believe I stated that.

Q. Do you recall now, thinking about that meeting, that he did do that? A. Yes, sir.

Q. And what did he say in that regard—that is, Mr. Osborne?

A. Told Mr. Willard that we wanted to bargain with him about wages.

Q. Did he mention anything about an Employees Association? A. I believe he did.

Q. What did he say about that, the best you can recall?

A. I don't remember him saying anything about it only that that is the way he introduced us, as the bargaining committee of the Association.

Q. Then what?

Mr. Petersen: May we have a time?

Q. (By Mr. Ryan): About what time was this

(Testimony of Thomas Franklin Herring.)
meeting in the office that you are testifying about,
to the best of your recollection?

A. Well, I really can't place any definite date
for it.

Q. You testified before it was about the middle
of October. [953]

A. Something near that because it was some time
after we went into it, and we went into it shortly
after the 26th of September.

Q. Now, what was discussed and what was said
and what was done by the parties present at that
meeting in Mr. Willard's office?

A. Well, as I recall it Mr. Osborne did not stay
for any length of time after he introduced us. He
left. Mr. Willard asked us what we were there for
and we told him it was to discuss wages and working
conditions, and he asked us if we had anything
drawed up and we told him we didn't have, so he
suggested that we adjourn and work up something
that we wanted and then have another meeting with
him.

Q. Was any suggestion made by anyone as to
when the next meeting would take place?

A. No, there wasn't.

Q. Then what did you do after that, Mr. Her-
ring, with respect to drawing up something in the
way of proposals for Mr. Willard?

A. Well, I believe within the next day or two
after that, why, we went to Mr. Whitelaw's office.

Q. You and George Harlan? A. Yes.

Q. Anyone else?

(Testimony of Thomas Franklin Herring.)

A. No. And we went there to draw up some kind of an [954] agreement and he showed us what Kramer's Bakery had and suggested that we take that to our meeting and see if our boys wanted that or something different.

Q. He gave you a working contract or a contract which the Kramer Bakery employees association had in effect with that company, is that right?

A. That is right.

Trial Examiner Mouritsen: Did he give you that or the by-laws?

Mr. Petersen: By-laws.

Q. (By Mr. Ryan): I was just going to bring that out.

Had you previously been up to Mr. Whitelaw's office on the question of by-laws?

A. I believe we got them both at one time.

Q. Is it your recollection now that when you first met with Mr. Willard and Mr. Osborne was in there and introduced you as the bargaining committee, that you at that time still had not had your by-laws and constitution?

A. No, we didn't the first meeting, I don't believe.

Q. Your recollection is that you got the by-laws from Mr. Whitelaw on that occasion and also a copy of the contract which was in effect between the Kramer Baking Company and its employees association?

A. I believe so.

Q. Then what did you do with that material? [955]

A. We had a meeting of the Association boys.

(Testimony of Thomas Franklin Herring.)

Q. About how long after you had been in Mr. Whitelaw's office did you have that meeting?

A. Oh, just shortly afterwards, the next night or two.

Q. Where did that meeting take place?

A. At George Harlan's.

Q. Was Mr. Osborne present?

A. I don't believe he was at that one.

Q. What business was transacted there?

A. Well, I really don't know. The minutes will show that. I don't know just what happened at that meeting, but I know we talked over what they was working under and there was some changes figured to be made different in it. I don't recall what.

Q. In that contract? A. Yes.

Q. Some changes to be made in the contract that you had gotten from Mr. Whitelaw?

A. That is right, to fit our working conditions there.

Q. Then after you had decided what changes were to be made in that, did you take it back to Mr. Whitelaw?

A. I believe George Harlan took it back.

Q. Did you see it then after Mr. Harlan had taken it back to Mr. Whitelaw? Did you have occasion to see anything that he got from Mr. Whitelaw? [956]

A. I don't believe I did. That happened about the time I was away and I came in on the last of it again, when it was practically all settled. [957]

(Testimony of Thomas Franklin Herring.)

Q. When did you change your mind about joining a union?

A. Before I called Mr. Osborne. [969]

Trial Examiner Mouritsen: When you first went in to talk with Mr. Willard, you and Merton Stout, did he say that he would deal with you, or would negotiate with you?

The Witness: Yes, sir. [989]

Recross Examination

Q. (By Mr. Petersen): When you first met Mr. Willard to negotiate a contract, and Mr. Osborne introduced you as the bargaining committee, what did you show Mr. Willard, if anything, that you were the authorized bargaining committee?

A. Nothing.

GEORGE P. DRINKARD

called as a witness by and on behalf of the Employees Association, having been first duly sworn, was examined and testified as follows:

Direct Examination [996]

Q. And what did you do, or discuss concerning the agreement at that meeting?

A. Well, we presented him with the agreement

(Testimony of George P. Drinkard.)

that we had. He read it over and disagreed with things that he didn't like and we discussed them.

Q. Then did you meet with Mr. Willard after that? A. Yes.

Q. Now, the next meeting you had with Mr. Willard, was that all of the employees or just this bargaining group?

A. It was usually all the employees who were present at the plant at that time or could be notified about the meeting.

Q. And what happened or, how long after this last meeting of the Association was it that you all met with Mr. Willard?

A. I can't say just how long was—within a few days.

Mr. Petersen: May we have the time fixed a little bit closer?

The Witness: I would say a week.

Mr. Petersen: May I ask one question on voir dire? [1012]

Voir Dire Examination

By Mr. Petersen:

Q. Did you meet with Mr. Willard before or after the plant started in operations on October 29, 1941?

A. To the best of my knowledge it was after the plant started.

Q. That fixes the date a little bit better.

(Testimony of George P. Drinkard.)

Q. (By Mr. Yeager): Did you have, or did you arrive at any final agreement at that meeting?

A. No.

Q. You had subsequent meetings, did you?

A. Yes.

Q. At those subsequent meetings did the bargaining group meet with him or did all of the employees of the Association meet with him?

A. The bargaining group and any member that happened to be present. It was an open meeting.

Q. Did you finally come to an agreement with Mr. Willard? A. We did.

Q. After you had come to an agreement with him did you have a meeting of the Employees Association then? A. Yes.

Q. And do you recall about when it was that you had that meeting? A. No, I don't. [1013]

Trial Examiner Mouritsen: Do you recall when you finally reached an agreement with him?

The Witness: Well, I don't recall when it was, but the minutes show in the Association, when that agreement was made [1014]

MERTON KIRKWOOD STOUT,

called as a witness by and on behalf of the Employees Association, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Yeager:

Q. What is your full name?

(Testimony of Merton Kirkwood Stout.)

A. Merton Kirkwood Stout.

Q. Where are you employed?

A. Holtville Ice and Cold Storage Company.

Q. When did you start working there?

A. I believe in May, 1934.

Q. Were you working there during the season of 1941? A. I was.

Q. What job did you have during that season?

A. Engineer—Diesel engineer, Diesel operator I believe is the way it is listed on the time card.

Q. And were you working for the Holtville Ice and Cold Storage Company in September of that year?

A. I was—the latter part. The first 15 days of September I was away on vacation [1029]

Q. When did you first hear any discussion among the employees of the plant concerning an Employees Association?

A. Well, one time along early in the spring there was talk about it and several times before that there was talk about it, but I don't remember—it seems to me like some of us engineers talked it over before that year even.

Q. The spring you refer to is the spring of 1941?

A. Yes, sir.

Q. And who among the employees discussed the matter?

A. Oh, I would say more or less all of us.

Mr. Ryan: I object to that as a conclusion of the witness.

(Testimony of Merton Kirkwood Stout.)

Q. (By Mr. Yeager): Can you name specifically some of the employees who discussed it?

A. I believe Henry Miller talked it over and I believe Eddie Jones talked it over.

Q. Was this during the spring of 1941?

A. I don't remember whether it was this time or before, but I had talked it over and I think at that time that Pete Drinkard and them were speaking about coming over here. We had some time along in there talked it over, but never made any definite decision about it in any way. We just talked it over, whether we will, in fact, whether we would form an organization. We weren't satisfied with the working conditions there and we were wondering in what way we [1030] could best benefit ourselves, whether if we formed a local union or joined up with some other union, which would be to our best advantage.

We had never made any decision on it in any way.

Q. And then did you attend this meeting at the Labor Temple here in El Centro?

Trial Examiner Mouritsen: Which one?

Q. (By Mr. Yeager): September 26, 1941.

A. Yes.

Q. Did you sign an application? A. I did.

Trial Examiner Mouritsen: For the Teamsters?

The Witness: Yes, I did.

Q. (By Mr. Yeager): And just prior to that meeting was there any discussion among the employees concerning an employees association?

A. Yes.

(Testimony of Merton Kirkwood Stout.)

Q. Who, among the members—who, among the employees discussed it as you recall?

Trial Examiner Mouritsen: Were you present at any of these discussions?

The Witness: Which discussions?

Trial Examiner Mouritsen: Any of the discussions about an employees association.

The Witness: On what date? [1031]

Trial Examiner Mouritsen: Any time before the 26th of September, 1941.

The Witness: Well, I say that we talked about it, several of us, around the plant there.

Trial Examiner Mouritsen: The question was immediately before the 26th of September, 1941.

The Witness: I think so.

Trial Examiner Mouritsen: Were you present where some of those discussions took place? Did you talk it over with somebody else?

The Witness: I did.

Q. (By Mr. Yeager): Who did you discuss it with?

A. If I remember right, Tommy Herring, and I spoke about it——

Q. And was that at the time that the Reed Manchester and York people were working there?

A. It was.

Mr. Petersen: To which we object unless you fix the time that the Reed Manchester and York people were there.

Mr. Whitelaw: I think the time has been fixed by three or four witnesses.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: How long was this before the 26th of September, 1941?

The Witness: Between the 15th and the time I got off vacation, and the 26th.

Trial Examiner Mouritsen: What time did you go on [1032] vacation?

The Witness: The first 15 days in September.

Trial Examiner Mouritsen: Where did the conversation take place?

The Witness: In the engine room.

Trial Examiner Mouritsen: Anyone else there?

The Witness: I don't think so.

Trial Examiner Mouritsen: What did you say and what did Herring say?

The Witness: Well, I asked Tom what he thought about it, whether we should join the A. F. of L. or whether we should start an independent union, and he seemed to think whichever way the majority of the employees went at the time that we started operations, why, he would join the employees as a whole, at the time operations started; when the management had decided upon who would be re-employed, as we knew a number of men would be laid off.

Trial Examiner Mouritsen: Did you say that or did Herring say that?

The Witness: That is what I said. I said that then would be the best time for us to start, if we had an association—to start after we knew who was going to be laid off and who wasn't, rather than to take in consideration those that were not at the time

(Testimony of Merton Kirkwood Stout.)

even employees, because some were entirely laid off and some temporarily laid off and not [1033] knowing for sure how many of the employees of the Ice Company would be off, it should be by those actually employed rather than by those who might be laid off or those who might never be put on again.

Mr. Petersen: Can we ask the witness to specify a little bit louder some of this, because it is very interesting and I can't hear it?

Trial Examiner Mouritsen: Keep your voice up.

Q. (By Mr. Yeager): Was there anything more said at that time that you recall?

A. No, we didn't decide on anything definite.

It was like you talk over anything, we thought we would talk over what was to our best advantage.

Q. Then after the meeting at the Labor Temple on September 26, 1941, were there any further discussions concerning employee associations that you heard? A. Yes, there was.

Q. About when was it that that discussion took place?

A. Well, I should say the next day after we went back on the shift.

Q. And who was present at that conversation?

A. Tommy Herring and I talked it over again about the advantages—what would be best.

Q. What did you say and what did he say, to the best of your memory? [1034]

A. Well, he come to me and I remember I was sitting on the front platform, the clear ice delivery

(Testimony of Merton Kirkwood Stout.)

platform, and he came to me and asked me what I thought about my having joined the union over here, signed up.

I told him, "Well, I don't know whether I did it for the best or not", for this reason: The way I understand it—understood at first, that we would be affiliated—affiliated with the A. F. of L. and have our own officers, but the way I gather it now we will be dominated entirely by the A. F. of L. and if they say to do something, regardless of whether we think it is really well, we will still be compelled to do as they think.

Q. Is that what you told him?

A. Yes, sir.

Q. *Is that what you told him?*

A. *Yes, sir*

Q. Then tell what else was said.

A. I think that was about all. He said he thought in a way, maybe, I was right. He asked me if I still thought I would stay in the A. F. of L. and I told him I didn't know; that I had pretty much made up my mind that I will drop them out—that is, drop out, even having paid in to become a member, that I would drop out as a member—as an active member over there.

Trial Examiner Mouritsen: Was that all that was said? [1035]

The Witness: All that I can recollect.

Q. (By Mr. Yeager): When was the next time you heard any discussion concerning the Employees Association?

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: When was the first time you heard any discussion after that time?

Q. (By Mr. Yeager): After that time.

Trial Examiner Mouritsen: Well, at the first one he did not state anything about an employees association.

The Witness: I thought I said that the first time we talked about an employees association was in the spring.

Trial Examiner Mouritsen: When did you next participate in a discussion about an employees association?

The Witness: Well, we discussed it every day around there. I don't remember who particularly, but I know after that talk with Tommy Herring and right at that time, we were the most interested in it, but we didn't know exactly whether my being a member of the A. F. of L. I should—what I should do about it, whether if I did anything with the A. F. of L. and with the other, it didn't look as I was being coerced one way or the other or what.

Trial Examiner Mouritsen: Frankly, I don't know what you mean, but the question is, Mr. Witness, after the 26th of September, or, 26th of September, 1941, when did you participate in any discussions about the formation of an employees association? [1036]

The Witness: I did.

Trial Examiner Mouritsen: About when did that occur?

(Testimony of Merton Kirkwood Stout.)

The Witness: The next day, I believe.

Trial Examiner Mouritsen: And with whom?

The Witness: Tom Herring.

Trial Examiner Mouritsen: Well, is that the one you have already told us about?

The Witness: It is.

Trial Examiner Mouritsen: Well, when was the next time after that that you talked to Herring or talked with Herring or anyone else about it?

The Witness: I don't know. I believe we discussed it, he and I, practically every day around there. It was up for quite some time. In fact, it was along until we formed the union and all the time through that time that we formed an employees association.

Q. (By Mr. Yeager): Who did you discuss it with—what employees there?

A. Principally Tom Herring and I. We were the only two employees who were right then favorable that I knew of—favorable of having an employees union.

Q. Well, did you take it up with any of the other employees out there?

A. Right close to that time all of us were laid off on account, if I remember right, the York man was called in to [1037] Los Angeles and none of us were working for a few days after that.

Q. All right. After you came back to work did you discuss this matter of an employees association with the other employees there?

A. We did ask them after we came back to work.

(Testimony of Merton Kirkwood Stout.)

Q. Who did you talk to?

Mr. Ryan: When was this?

The Witness: As they were called back to work.

Mr. Ryan: When was that?

The Witness: Well, the exact date I couldn't say. It was between—I think it was along in October when the plant started up with its regular personnel that it would have for the coming year. Then each one we would talk to as they came back to work.

Trial Examiner Mouritsen: Mr. Witness, the record shows so far that the plant started up on the 29th of October, 1941.

The Witness: Yes.

Trial Examiner Mouritsen: For the 1941-42 season. Does that help you to fix the time any?

The Witness: Well, that is just what I was saying. Now, we will say on the 29th of October George Harlan came back and Pete Drinkard came back, Simon Hogue came back, Lloyd Gettle came back, and any other employees that came [1038] back we asked what they thought about an employees union.

Trial Examiner Mouritsen: Did you do that?

The Witness: I did part of it and part of it was done by Tom Herring and part of it by George Harlan.

Q. (By Mr. Yeager): Prior to the time that these men came back in the latter part of October, had you had any organization meetings of the Association?

(Testimony of Merton Kirkwood Stout.)

A. Well, it was the way the employees, most of them looked at it——

Trial Examiner Mouritsen: Now, that is not the question.

Mr. Yeager: Just answer my question.

The Witness: Will you restate the question?

Trial Examiner Mouritsen: Read the question.

(Question read.)

The Witness: There being no employees there, why, we couldn't very well form an association before.

Q. (By Mr. Yeager): Did you have any meetings of the employees prior to the end of October?

A. Yes.

Q. When was the first one and where did it take place?

Trial Examiner Mouritsen: One question at a time.

The Witness: I couldn't state exactly the exact time.

Trial Examiner Mouritsen: We don't care about the exact date; if you can fix it approximately that is what we [1039] would like.

The Witness: I would say around the 15th of October.

Q. (By Mr. Yeager): Where did that take place, Mr. Stout?

A. A few of the employees there at the plant one morning, and I happened to be over there, we decided then that we would actively begin an organization.

(Testimony of Merton Kirkwood Stout.)

Q. And where did you have your meeting?

A. Had the meeting, I believe, at my house.

Q. And who were present?

A. I think at that time there was only George Harlan and Tom Herring and I believe Dick Ireland was there—just an employees get together meeting.

Q. And who called that meeting?

A. I believe I did.

Q. Was Mr. Osborne present? A. No.

Q. Had any contact with Mr. Osborne been made up to that time?

A. I had not contacted him.

Q. Had you had any conversation with him?

A. I had not.

Q. Had he ever approached you? A. No.

Q. What was discussed at that meeting at your house around the 15th of October? [1040]

A. Well, we discussed—

Trial Examiner Mouritsen: If you can tell us who said what.

The Witness: I believe I told them that until the full personnel was hired that we—if any two or three of us decided on anything that it wasn't giving the other members that might later on be hired, an equal part in saying what would take place, and it would be better to let it go until the whole personnel was hired.

Q. (By Mr. Yeager): Were there any more organization meetings that month?

(Testimony of Merton Kirkwood Stout.)

A. Not until after the full personnel was hired about the 29th of October.

Q. Did you attend any meetings that Mr. Osborne was present at?

A. One at George Harlan's house.

Q. When did that take place, approximately?

A. When we first started up,—when we first organized an association—when we signed the by-laws and constitution and started our minutes on our record books.

Q. When was that, approximately?

A. Right at the end of October.

Q. What did Mr. Osborne say at that meeting?

A. I believe he said that George Harlan had asked him to come over and show us just what we had to do to keep our [1041] records straight.

Q. Had any officers been elected up to that time?

A. I don't believe so.

Q. Were officers elected at that meeting, if you recall?

A. Let me see—no officers were elected. I believe on October 30th—I can look in my minutes and see.

Trial Examiner Mouritsen: Let us get these minutes and see if we can't get some certainty about this thing.

Q. (By Mr. Yeager): Are you an officer or were you an officer of the Employees Association in 1941? A. Yes.

Q. What office did you hold?

A. Secretary-treasurer.

(Testimony of Merton Kirkwood Stout.)

Q. And did you keep a record of the minutes after you were elected secretary? A. I did.

Q. Secretary-treasurer? A. I did.

Q. And do your minutes date back to previous meetings or did you just commence keeping minutes from the time you were elected?

A. I just commenced keeping minutes from the time I was elected.

Q. Do those minutes refer to any previous meeting? A. I believe not. [1042]

Mr. Ryan: May I see them before he starts testifying from them?

Mr. Yeager: Do you want to come up and look at them?

Mr. Ryan: I think it is pretty crowded up there.

Mr. Smith: Do you mind if I look over your shoulder?

Trial Examiner Mouritsen: Take a short recess.

(Short recess.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Yeager): Mr. Stout, do you have your minute book before you? A. Yes.

Q. And when does your minute book indicate that you first commenced keeping minutes?

A. Thursday, October 30, 1941.

Q. And those minutes of October 30, 1941, what are those a record of?

A. They are a record of the date after we had actually signed the constitution and by-laws.

Trial Examiner Mouritsen: Are those minutes

(Testimony of Merton Kirkwood Stout.)

of October 30th a record of a meeting held on that date?

The Witness: They are.

Trial Examiner Mouritsen: And do the minutes—when did you record those minutes in the book?

The Witness: I jotted down at that time what took [1043] place and when I got home I wrote them up in the book from the memorandum and the notes taken at the meeting.

Trial Examiner Mouritsen: Notes taken at the meeting?

The Witness: Yes.

Trial Examiner Mouritsen: And do those minutes of October 30th set forth the business that transpired at the October 30th meeting?

The Witness: It does.

Mr. Yeager: I would like to have read into the record the minutes of that meeting, Mr. Examiner.

Mr. Petersen: Can't we do that by stipulation—say that the minutes show certain officers were duly elected, without having to read it?

Mr. Yeager: It would be as short to read the stipulation.

Trial Examiner Mouritsen: Do you have any objection to that procedure?

Mr. Petersen: No.

Trial Examiner Mouritsen: Let him read them into the record.

Mr. Ryan: That is the only thing I would agree to. He can read them if he wants to, only to show

(Testimony of Merton Kirkwood Stout.)

that that is what appears in the minute book under that date.

Mr. Yeager: And he also testified that he took notes as to what transpired and copied these minutes from those. [1044]

Trial Examiner Mouritsen: It is only an alternative of putting the minute book in evidence.

Mr. Ryan: As an alternative to that he can read them in.

Trial Examiner Mouritsen: I will read them in and you can check me.

“Thursday, October 30, 1941.

“An organization meeting of the employees of the Holtville Ice and Cold Storage Company was held Thursday, October 30, 1941, at the home of M. K. Stout, Holtville, there being present the following members, all of whom had signed the by-laws and constitution of the Association:

“Lloyd Gettle, William Morgan, Simon Hogue, M. K. Stout, George Harlan and Richard H. Ireland.

“There being a quorum present M. K. Stout called the meeting to order and acting as temporary chairman called for a nomination for the office of president.

““Lloyd Gettle placed in nomination the name of George Harlan, also moving that the nominations be closed. It was seconded by Simon Hogue and carried by a unanimous vote.

““The duly elected president, taking the chair, called for nominations for vice-president.

(Testimony of Merton Kirkwood Stout.)

“Simon Hogue nominated Tom Herring, seconded by Lloyd Gettle, who also moved that the nominations be closed. It was seconded by Richard Ireland; carried by a unanimous [1045] vote of those present.

“Nominations were now asked for the office of secretary-treasurer. William Morgan placed in nomination the name of M. K. Stout, seconded by Simon Hogue, also asking that nominations be closed, seconded by Richard Ireland and carried by a unanimous vote.

“The organization being completed, the matter of a bargaining committee was brought up for consideration.

“The president, George Harlan, asked for nominations of two members of the bargaining committee to act with the duly elected officers.

“Richard Ireland proposed Lloyd Gettle, seconded by Simon Hogue, who also moved nominations be closed and the secretary be instructed to cast the unanimous vote; seconded by Tom Herring. Carried.

“Tom Herring proposed G. P. Drinkard, Jr., as the other member, seconded by William Morgan, who also asked the nominations be closed, and the secretary be instructed to cast the unanimous vote, seconded by Simon Hogue, carried.

“The matter of a preliminary proposal setting forth the Association's idea of wages, hours of labor and working conditions were discussed and the bargaining committee authorized to present the con-

(Testimony of Merton Kirkwood Stout.)

clusion of the bargaining committee of the Association and its members, to the management for consideration. [1046]

“There being no further business the meeting was adjourned.

“M. K. Stout, Secretary.”

Trial Examiner Mouritsen: Did I read the minutes correctly, Mr. Stout?

The Witness: Yes.

Q. (By Mr. Yeager): Prior to that meeting. Mr. Stout, had you or any other member of the Employees Association obtained any by-laws?

A. We had.

Q. Or constitution?

A. We had obtained copies of by-laws and the constitution of the Kramer Bakery Company and I believe of the Imperial Ice Company here in El Centro.

Q. And who did you obtain those from?

A. Mr. Whitelaw.

Q. And who was present when you obtained those?

A. I believe they were obtained at two different times.

I, personally, one time, was over and obtained them and I believe at another time George Harlan and Tom Herring were over and got some.

Q. And at the time you obtained your copies were you by yourself? A. I was.

Q. And how did you happen to go there to see Mr. Whitelaw? [1047]

(Testimony of Merton Kirkwood Stout.)

A. Well, several days before that I had talked around to some members of the Imperial Ice Company and the Kramer Baking Company and asked them who they thought had the most knowledge of how we would form an association to comply with the law.

Q. What did they say?

A. Well, he said he would be willing to do that.

Mr. Petersen: May I object.

Q. (By Mr. Yeager): Who did you talk to?

A. I talked to Mr.——

Q. I mean this conversation as to who would be a good person to see.

A. Oh, the driver on the truck that delivers bread in Holtville. I don't know his name.

Q. Where did that conversation take place?

A. That took place in Holtville.

Q. And about when was it that that took place?

A. Well, it was some time—well, I would say around the middle in the week in September—say between the 15th and 20th. I don't mean September, but October.

Q. And what did you say to this driver and what did he say to you?

Mr. Ryan: I object to this line of questioning inasmuch as the witness has been unable to identify the person with whom he talked other than in the manner in which he has, [1048] which is general and indefinite.

Mr. Yeager: It was the driver for the Kramer Bakery Company.

(Testimony of Merton Kirkwood Stout.)

Mr. Ryan: And I move to strike it from the record.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Yeager): What did this driver say and what did you say?

A. I asked him who, in his estimation, would be a good man, and he referred me to Mr. Whitelaw.

Q. Did you tell him "a good man" for what?

A. To tell us how we would start an employees association.

Q. And then did you go to Mr. Whitelaw after that? A. I did.

Q. How soon after?

A. Oh, I believe probably the next day.

Q. Do you know whether Mr. Herring and Mr. Harlan had already been to see Mr. Whitelaw?

A. I couldn't say.

Q. You went by yourself and what conversation did you have? A. I did.

Q. You went by yourself? A. I did.

Q. What conversation did you have—what did Mr. Whitelaw say and what did you say?

A. I asked Mr. Whitelaw if he had any information that he [1049] could give me on how to write up our constitution and by-laws and how we should write up our—any agreement we would sign with Mr. Willard.

Q. And what did he say?

A. He said he had around his office a constitution and by-laws of the Kramer Baking Company,

(Testimony of Merton Kirkwood Stout.)

and a copy of the agreement that they signed at the Kramer Baking Company—signed with their employees and that he had a copy of it. He said he would give me a copy of the contract signed by the Imperial Ice Company with their employees, too.

Q. Was there anything more said?

A. He told me after I looked these over that I could write in any paragraphs that we wanted or to make up a whole new contract from what I could gather from these two points and to bring it back over and he would write it up in legal form.

Q. Was there anything else said?

A. I believe that was all.

Q. Then what did you do with those copies of the Kramer Bakery Company by-laws and constitution?

A. I took them home with me.

Q. Did you present them to the members of the Employees Association?

A. I did.

Q. When? [1050]

A. I would say the next day after I got home.

Q. Who did you show those copies to?

A. All the employees that were on the payroll at that time.

Q. Where?

Mr. Ryan: I object to that.

Q. (By Mr. Yeager): Where was it you showed these copies to them?

A. During the noon hour.

Q. Out at the plant?

A. No; we went over to where we parked our cars at the side of the plant and read them over.

(Testimony of Merton Kirkwood Stout.)

Q. And did you hold any formal meeting at that time? A. I couldn't say that it was formal.

Q. Any kind of a meeting?

A. The members present said to go ahead and draw up whatever I could in the line of the way I thought should be to our best advantage in making an agreement with Mr. Willard.

Q. I am talking about——

Trial Examiner Mouritsen: Who were present?

Q. (By Mr. Yeager): I wanted to find out about the by-laws first, Mr. Examiner. Did you discuss these by-laws with the employees and the constitution that you were to have?

Trial Examiner Mouritsen: I still want to know who talked it over.

Mr. Yeager: I do, too. [1051]

Q. (By Mr. Yeager): Who was there?

A. I would say there was Tommy Herring and George Harlan and it seems like there was one other, but I can't place him.

Q. Where did this conversation take place?

A. Along the street where we park our cars.

Q. And were any changes made in this form that had been supplied to you, or what happened?

A. I showed them these forms and they told me before we could do anything—before we did do anything, to take up the best points in both of these constitution and by-laws and then bring them over and have them typed out by Mr. Whitelaw.

Q. Who did you work out the best points of these papers with?

(Testimony of Merton Kirkwood Stout.)

A. I did what I thought was the best points with Mr. Whitelaw, but I had first jotted down what I thought would be to our advantage before I brought them over to him, to simplify and save time. [1052]

Q. Will you mark this for identification?

(The document referred to was marked as Employees Association Exhibit No. 1, for identification.)

Q. Mr. Stout, showing you Employees Association Exhibit No. 1 for identification, I will ask you if you have seen that before (handing exhibit to the witness)? A. I have.

Q. And what is that?

A. It is the by-laws of the Employees Association of the Holtville Ice and Cold Storage Company.

Q. Is that the final draft that was prepared for your Association?

A. Yes, sir, the one signed by the employees.

Q. Now, prior to your meeting of October 30th that has been read into the record, the minutes of which have been [1057] read into the record, did you obtain those signatures at the end of that day?

A. Part of them—I did part of them. I believe George Harlan obtained part of them and Tom Herring.

Q. And how did you obtain the signatures?

A. Went around to each individual man that the company had decided they would re-employ for the 1940-41 season, I believe.

(Testimony of Merton Kirkwood Stout.)

Q. As they came back to work you contacted them? A. Yes.

Q. And do you know of your own knowledge all of these signatures were on the by-laws before your October 30th meeting? A. They were.

Q. What was your answer? A. They were.

Q. And did that list of 12 men constitute your membership as of October 30th?

A. It did, employees actually known—actually known and we knew they were going into service—knowing that they would go into service.

Q. And were new members added to your Association at later dates? A. They were.

Q. Now, at that particular time, October 30th, was there [1058] any other papers that the members signed in addition to the by-laws?

A. There were not.

Q. And did they sign the constitution?

A. Yes, the constitution and by-laws were on two different sheets.

Q. Was there anything else that they signed—any membership card or anything of that sort?

A. Not at that time.

Q. Later on did you change your procedure for enrollment for employees in your Association?

A. We did. We concluded that after we had our agreement with Mr. Willard, that the by-laws and constitution—they were on a board in the engine room, and anyone could read them and when they had signed a deduction card for the membership dues and for initiation fees, that would be

(Testimony of Merton Kirkwood Stout.)

their signature showing that they had joined the Employees Association.

Q. And when did you commence following that procedure? A. The 1st of January, 1942.

Mr. Yeager: Will you mark this?

(The document referred to was marked as Employees Association No. 2, for identification.)

Q. (By Mr. Yeager): I show you Respondent Ice Company Employees Association Exhibit No. 2, for identification, [1059] and ask you if you have seen that before (handing paper to the witness).

A. I have.

Q. And is that the constitution that you were referring to? A. It is.

Q. Of the Employees Association?

A. It is.

Q. And those signatures on the last page of the exhibit—who obtained those signatures?

A. Well, I did and George Harlan and Tommy Herring. The men were contacted, each one of them, and they signed the other at the same time.

Q. You took that and you took Exhibit 2—you took Exhibit 2 and Exhibit 1 around?

A. Correct.

Q. Around at the same time? A. Yes.

Q. Were all of those 12 signatures on the constitution before October 30th? A. They were.

Q. October 30th meeting? A. They were.

Mr. Yeager: I would like to introduce Exhibits 1 and 2 on behalf of the Respondent Ice Company

(Testimony of Merton Kirkwood Stout.)

Employees Association in evidence as Respondent
Ice Company Employees Exhibits [1060] 1 and 2.

Trial Examiner Mouritsen: Any objection?

Mr. Ryan: No objection.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: They are received
as marked.

(Thereupon the documents referred to, heretofore marked for identification as Employees Association Exhibits 1 and 2, were received in evidence.)

EMPLOYEES ASSOCIATION EXHIBIT No. 1

By-Laws of the Employees Association of the Holtville Ice and Cold Storage Company

Article I

Meetings

Section 1. Regular meetings of this association shall be held on the second Tuesday of each calendar month unless otherwise designated by the president.

Section 2. Special meetings may be called at any time deemed necessary by the president or at the request of three or more members of this association.

Section 3. At regular and special meetings of this association a quorum shall consist of a majority of the membership present.

Section 4. No business shall be transacted at any special meeting other than that for which the meeting is called.

(Testimony of Merton Kirkwood Stout.)

Article II

Membership

Section 1. All applicants for membership shall be required to sign Collective Bargaining Authorization Form which on being signed by the president shall authorize the secretary-treasurer to include the applicant on the roster.

Section 2. Any member leaving the employment of the Holtville Ice and Cold Storage Company at option of board of directors shall automatically terminate his membership in this association.

Article III

Nominations, Elections and Term of Office

Section 1. The president, vice-president, secretary-treasurer and members of the Bargaining Committee shall be elected by a majority vote of those present at any regular meeting or special meeting called for that purpose.

Section 2. All officers shall be elected at the annual meeting of the first Tuesday in June of each year but must be members in good standing, and no officer shall serve two consecutive terms.

Section 3. Any officer may be removed from office by a two-thirds vote of the whole membership at a regular meeting or at a special meeting called for that purpose, his successor elected at said meeting to hold office for the unexpired term of said officer so removed from office.

Article VI

Duties of Officers

Section 1. The president shall preside at all

(Testimony of Merton Kirkwood Stout.)

meetings of the association and shall have the power to appoint all special committees unless otherwise instructed by the membership.

Section 2. In the absence of the president the vice-president shall preside and perform the duties of the president.

Section 3. The secretary-treasurer shall maintain all records of the association and shall receive, disburse and account monthly for all funds.

Article V

Funds and Expenditures

Section 1. Regular dues in this association shall be \$1.00 per month, payable in advance.

Section 2. Members resigning from the employees of the company shall not be eligible to the return of dues.

Section 3. No expenditure in excess of \$5.00 shall be made in any one calendar month without a majority vote of the membership present at any regular or special meeting.

Section 4. The secretary-treasurer may be required to furnish a bond, the amount of such bond to be determined from time to time by the membership. The premium upon said bond shall be paid by this association.

Section 5. No officer shall receive payment for his services.

Article VI

Penalties

Section 1. There shall be no membership fines.

Section 2. Any member of this association shall

(Testimony of Merton Kirkwood Stout.)

be suspended when two months in arrears for dues, and upon notice in writing being given to said delinquent member and payment not being made within thirty days thereafter, said member shall be automatically dropped from the association and may be reinstated only upon payment of back dues.

Article VII

Resignation and Removals From Office

Section 1. All officers shall have the privilege of resigning at any time excepting that in the case of secretary-treasurer such resignation shall not take effect until a complete audit of said secretary-treasurer funds shall have been made and found to be correct.

Article VIII

Amendments

Section 1. Amendments to the Constitution and by-laws may be made by a two-thirds vote of the membership either at a regular or special meeting called for that purpose or by written assent filed with the secretary-treasurer.

In Witness Whereof, the undersigned employees do hereby accept the said By-Laws as their By-

(Testimony of Merton Kirkwood Stout.)

Laws and agree, each with the other, to abide by the same.

Signed Oct. 30, 1941

Frank Lloyd Gettle

Richard H. Ireland

Tom Herring

Geo. R. Harlan

William T. Morgan

J. J. Cardwell

M. K. Stout

Simon Hogue

N. Ballard

G. C. Dunkard, Jr.

Woodrow Faulkner

Jack Grantham

EMPLOYEES ASSOCIATION EXHIBIT No. 2

Constitution of the Employees Association of the Holtville Ice and Cold Storage Company

Preamble

To unite into one organization employees of the Holtville Ice and Cold Storage Company to promote cooperation between employer and employees regarding hours of labor, wages, working conditions, safety and accident and all other matters affecting employees' interests shall be the aim and purpose of this association.

Article I

Name

The name of this organization shall be the Em-

(Testimony of Merton Kirkwood Stout.)

ployees Association of the Holtville Ice and Cold Storage Association.

Article II

It shall be the object of this association to maintain, through representatives of its own choosing, a continuous medium of the company on hours of work, wages, working conditions and other matters of employment.

Article III

Membership

Any employee who does not have the right to hire and/or fire shall be eligible for membership.

Article IV

Section 1. The officers of this association shall be a president, vice-president, a secretary-treasurer. The powers, duties, term of office and manner of election and removal of officers shall be provided as in the By-Laws.

Section 2. Only regular members in good standing shall be eligible to hold office.

Article V

Section 1. The affairs of this association shall be administered and governed by a General Committee consisting of the president, the vice-president, the secretary-treasurer, and two members at large, to be elected from the membership.

Section 2. The General Committee will be responsible for the transaction of business with the management of the company.

(Testimony of Merton Kirkwood Stout.)

Section 3. The General Committee is authorized to negotiate for this association with the management of the company, written agreements covering such collective bargaining arrangements as may be required, and the president and secretary-treasurer are authorized to execute such agreements after they have been submitted to and approved by the members of this association.

Article VI

Meetings

Section 1. Meetings of this association shall be held at such time and place as designated in the By-Laws.

Article VII

Finances

Section 1. The revenues of this association shall be governed as defined in the By-Laws.

Article VIII

Amendments

Section 1. This constitution may be amended by a majority vote of the members, provided, however, that such amendment does not conflict in any manner with the constitution of this association.

Article IX

Authority

Section 1. The rules contained in "Roberts Rules of Order, Revised" shall govern this association in all cases in which they are applicable and in which they are not inconsistent with the By-Laws or special rules of this association.

(Testimony of Merton Kirkwood Stout.)

Article X

Liabilities

Section 1. Excepting as may be otherwise specified in the By-Laws, this association shall assume no obligations, financial or otherwise, of any of its members.

In Witness Whereof, the undersigned employees doe hereby accept said constitution as their constitution and agree, each with the other, to abide by the same.

Signed Oct. 30, 1941

Frank Lloyd Gettle

Richard H. Ireland

Tom Herring

Geo. R. Harlan

N. Ballard

G. C. Dunkard, Jr.

Woodrow Faulkner

Jack Grantham

William T. Morgan

J. J. Cardwell

M. K. Stout

Simon Hogue

Mr. Yeager: These are originals and we would like to have the privilege of withdrawing them and substitute copies.

Trial Examiner Mouritsen: Leave them during the day and then they may have them copied. Off the record.

(Discussion off the record.)

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: On the record.

Q. (By Mr. Yeager): Mr. Stout, I am showing you Board's Exhibit 5 and referring you to paragraph 15 on page 3, and ask you to read that paragraph. (Handing Exhibit to the witness.)

Do you know of your own knowledge who proposed incorporating that paragraph into the final agreement, Board's Exhibit 5? A. I did.

Q. What? A. I did.

Q. And do you recall when you proposed that? [1061]

A. I believe it was written into the original.

Q. Did that matter come up at one of your meetings?

Mr. Petersen: To which I am going to object as being leading and suggestive. Let the witness tell about it.

Trial Examiner Mouritsen: Overrule the objection.

The Witness: Well, I could not say. I had charge of the drafting with Mr. Whitelaw on that and I took out—I have the copy here of the constitution and by-laws and of the agreement. At one time that was made up between the Imperial Ice Company and their employees. I also had a copy of the by-laws and constitution of the Kramer Baking Company, and I think at one time a copy of their agreement with their employees, and I took out what Mr. Whitelaw and I thought were the best points of these to write up ours.

(Testimony of Merton Kirkwood Stout.)

Q. (By Mr. Yeager): Do you recall discussing that paragraph of Board's Exhibit 5, paragraph 15, at any of the meetings of the Employees Association? A. It was discussed.

Mr. Petersen: To which I am going to object. The minutes of the meeting will be the best evidence.

Trial Examiner Mouritsen: Overrule the objection. Answer the question yes or no—do you recall?

The Witness: No.

Q. (By Mr. Yeager): Do you recall discussing paragraph 15 [1062] of Board's Exhibit 5, with Mr. Willard, at any of these negotiating meetings held with him? A. I do.

Q. And can you fix the date, approximately, when that discussion took place?

A. Between—well, the first meeting—let me see. We signed the constitution and by-laws at the first meeting—they were in the minutes of October 30th, and then the next meeting shows, I believe, November 19th, substantially that, but that is what I remember. Well, in between these two points, this would take place with Mr. Willard among the bargaining committee and him.

Q. Can you fix it any closer than that—between October 30th and November 19th?

A. I could not.

Q. And who was present at the meeting with Mr. Willard when that paragraph was discussed?

A. The bargaining committee.

(Testimony of Merton Kirkwood Stout.)

Q. Were any of the other employees present that you recall?

A. They may have been—I couldn't state for sure.

Q. Now, what did you say in regard to paragraph 15 and what did Mr. Willard say, as best you can recall?

A. The best I recall, Mr. Willard said, "No," he didn't like that paragraph, and then he went on to ask me why I had inserted a paragraph like that in there, and I told him [1063] that the secretary of the Association—that it took a lot of running around off of my hands if he could see fit to put that in. Otherwise I would have to have some particular time or point or place set where members could come and pay their dues or I would have to go around to them and collect them personally, and either way it looked like it was rather hard on us, and if he could see fit to do this it would help a lot.

I believe he still at that time didn't say yes or no, whether this would go in or not, and we left it up to him and later came back for another decision, and he decided then that it would be all right to add this in.

Q. Add paragraph 15 in? A. Yes.

Q. Now, I will refer you to paragraph 16, page 3 of Board's Exhibit 5, and ask you to read that (handing exhibit to the witness).

Do you recall now that paragraph, paragraph 16 of Board's Exhibit 5, being incorporated in the final agreement?

(Testimony of Merton Kirkwood Stout.)

A. I believe the organizing—not the organizing, but the bargaining committee were in favor of a closed shop in the beginning and Mr. Willard thought we ought to have an open shop.

Q. Now, when was that subject discussed that you just mentioned? [1064]

A. At one of these meetings between these two dates that I set before, October 30th and November 19th. We had several meetings with him then.

Q. And do you recall who was present?

A. The bargaining committee. I couldn't say who else was.

Trial Examiner Mouritsen: Well, did the bargaining committee in each instance consist of three officers?

The Witness: And two members selected at large. At that time Lloyd Gettle and G. P. Drinkard.

Q. (By Mr. Yeager) Who on behalf of the bargaining committee, if anyone of you, proposed a closed shop?

A. I couldn't say.

Q. Did you?

A. I couldn't say whether I proposed it or not.

Q. Well, did any of the bargaining committee propose it?

A. I think it was agreed to by us at one time that we would ask for a closed shop.

Q. Well, did you at that meeting ask for a closed shop?

A. It seems like we did, verbally.

Q. What did Mr. Willard say?

A. He was opposed to it.

(Testimony of Merton Kirkwood Stout.)

Q. What did he say? (No answer).

Q. As best you can recall.

A. The way I remember, he said, it seems that he didn't [1065] favor a closed shop in any plant. That was my understanding of it. It is not the exact words, but that he wasn't in favor of a closed shop in any plant. He believed in an open shop where a man could go to work and work 15 days and then either quit or be obliged to become a member.

Q. And then do you recall whether this paragraph 16 the way it stands in the final agreement, was in your proposal to Mr. Willard or not?

A. I have another one here made out. I don't know whether it was in the first one or not. I had another one that we worked on and later on gave up and worked on another one. I don't know whether it was in the first one or not. The one I am speaking of comes before that one.

Q. And have the employees at the Holtville Ice and Cold Storage Company complied with paragraph 16 ever since? A. They have.

Q. And are all of the employees of the Holtville Ice and Cold Storage Company that are now employed members of the Employees Association?

A. Those eligible—those that have been there over 15 days.

Q. They are? A. Yes.

Q. Mr Stout, did you attend this meeting in El Centro on September 26? [1066] A. I did.

(Testimony of Merton Kirkwood Stout.)

Q. Did you sign an application for the Teamsters Union, A. F. of L. A. I did. [1067]

Q. But that was a meeting at George Harlan's house, and what did Mr. Osborne say at that meeting?

A. Well, all he said was that in order to have anything like this in proper form we should have a cash book and should have a membership book and should have a minute book, and we should have a receipt book. He said that all of these should be kept up in proper form, and I believe after that he left.

That is about all he said.

Q. Do you recall Mr. Osborne distributing any literature of the Associated Farmers at that meeting? A. No.

Q. Have you ever seen Board's Exhibit 6-A before (handing exhibit to the witness).

Or a copy of it? [1068] A. I have not.

Q. Have you ever seen Board's Exhibit 6-B, or a copy of it (handing exhibit to the witness)?

A. I have not

Q. Did Mr. Willard at any time during the organization of the Employees Association talk with you concerning it? A. He did not.

Q. Did you confer with him concerning the Employees Association? A. I did not.

Q. Did you talk with Pete Pool or did he talk

(Testimony of Merton Kirkwood Stout.)

with you concerning the formation of the Employees Association? A. No.

Q. Did you talk with Herman Smith or did he talk with you concerning the formation of the Employees Association? A. No.

Q. Are you still the treasurer of the Employees Association? A. I am.

Q. And are you functioning at the present time as an Employees Association? A. We are.

Q. Do you have a bank account?

A. We do.

And do you still keep your minutes up?

A. I do. [1069]

Mr. Yeager: That wasn't intended to be mercenary. I was merely showing they are still active.

Q. (By Mr. Yeager) Mr. Stout, there has been—well, I will put it this way: Do you know whether Mr. Whitelaw was paid for his services for furnishing you with these copies of the by-laws and so forth? A. He was.

Q. Who paid him? A. I did.

Q. And did you pay him by way of cash or check? A. I paid him cash.

Q. How much did you pay him? A. \$25.

Q. About when was it you paid him?

A. Some time in December, 1941.

Q. Where did that money come from?

A. Come from the cash dues and initiation fees collected.

Q. Did the Holtville Ice Company ever contribute anything to your organization?

(Testimony of Merton Kirkwood Stout.)

A. No.

Mr. Ryan: Object to that as calling for the conclusion of the witness.

Trial Examiner Mouritsen: I suppose you mean financially?

Mr. Yeager: Yes, financially. [1070]

The Witness: He did not—they did not.

Q. (By Mr. Yeager) Did Mr. Willard?

A. Mr. Willard did not.

Mr. Yeager: I believe that is all.

Cross Examination

Q. (By Mr. Ryan) You went down to the A. F. of L. on the evening of September 26, 1941, did you not? A. I did.

Q. You appeared there with a number of other employees from the Holtville Ice and Cold Storage Company on that occasion, didn't you?

A. I did.

Q. You listened to some representative of the A. F. of L. at that time, did you not, the Teamsters Union? You all talked to some Teamsters representative at that time? A. We did.

Q. In the hall? A. Yes, sir. [1071]

Q. (By Mr. Ryan) After you got down to the hall that night, the night you signed your application blank, you first listened to a representative of the A. F. of L. talk to you, isn't that right, a Teamsters representative? A. Yes, sir.

Q. And after you had listened to him, then you employees of the Holtville Ice Company took a vote among yourselves as to whether to sign up with the

(Testimony of Merton Kirkwood Stout.)

A. F. of L. or not on that occasion, isn't that right—took a standing vote?

A. I don't believe we took a vote; we voluntarily signed up. [1072]

Q. You all signed up that were present?

A. I believe so. [1073]

Q. How did you happen to be there on that occasion?

A. I had come over to the plant and Tom, if I remember rightly, had just got off the clear ice delivery.

Q. And who started the conversation?

A. I wouldn't say who started the first word.

Q. What was said by Herring and by yourself on that occasion?

A. Well, I told Tommy that I had signed up over here, but in a way I didn't feel that I had done exactly right.

Q. Why didn't you feel you had done exactly right?

A. At that time, and for, I will say, at least six months before—way long in the spring before the plant shut down it was known we were changed over from Diesel engine set-up to the electric that there would be a number of men [1075] laid off, and also that there was a question brought up which had been discussed, a question about personal relatives working at the plant, and that they also were not going to appear in the 1940-41 season.

Q. How did that affect you? Were you a relative of some one there?

(Testimony of Merton Kirkwood Stout.)

A. No, I have no relatives there.

Q. Then that did not enter into your problem?

A. Yes, it affected me—affected my opinion of why I joined the union and why I dropped out.

Q. Will you explain that a little further?

A. I looked at it like this: The employees that were working there at that time were not giving Mr. Willard a square deal. In fact, they knew that they would not be employees in the coming year and still go into a bargaining agent with some bargaining agreement with some union with the hopes that they could retain their jobs when they had no right to believe that they could, and also that goes into the same effect with the relatives of those working there that were known—that it was known they were going to be laid off.

Q. Did you know you were going to be laid off?

A. No.

Q. Well, how did you think anyone else knew it?

A. They didn't. I wasn't a relative. I didn't know I was going to be laid off. I didn't know I was going to be [1076] kept on. I expected that I would be kept on. [1077]

Q. Did you attend the—did you attend that meeting at Harlan's home when Osborne was there?

A. My understanding is there was two meetings there and I attended one of them.

Q. Was Mr. Osborne at the one you attended at Harlan's home?

A. No. I attended one of them.

(Testimony of Merton Kirkwood Stout.)

Q. And Mr. Osborne was present at that time, is that right?

A. Yes, Mr. Osborne was present at one meeting and I also understand he was there at two meetings, one of which I was not present at.

Q. Now, this meeting that you were at, at Mr. Harlan's home, when Osborne was present, that occurred also before you began to keep your minutes, isn't that right? A. It did.

Q. About when—how long before the date of your first meeting when you kept minutes?

A. A very few days.

Q. A few days before? Can you tell us what Mr. Osborne said at that meeting that you were at, at Mr. Harlan's home?

A. I still have these dates wrong.

The meeting that he was there, that I attended, was the one where he instructed us on how to—showed us how to keep our books. The other meeting that he was there I did not attend. [1081]

Q. The one you were at was when he instructed you how to keep your minute book and that was about how long—a few days or so before?

A. No, that was that same evening that we started the organization.

Q. To keep your books?

A. That we voted on the starting of our organization to keep the minutes, and that—

Trial Examiner Mouritsen: You say that was the meeting where you voted to keep the minutes,

(Testimony of Merton Kirkwood Stout.)

or was that the meeting where you actually did start to keep the minutes?

A. Where we actually did, I guess.

Q. (By Mr. Ryan) Did Mr. Osborne tell you how to keep your minutes in your book?

A. He told us that we should have a roster of names of those that belonged, showing that they paid initiation fees and dues. He told us we should keep a minute book and keep a cash book—keep account of the cash paid in and paid out.

He advised us it probably would be to our best advantage to keep a bank book—keep all of our money in the bank.

Q. Now, before this time when Mr. Osborne was at this meeting and instructed you how to keep your books, as you have just testified, you had had a meeting with Mr. Willard, had you not, with respect to attempting to bargain with [1082] respect to working conditions? A. We had.

Q. And that had taken place a couple of weeks before, had it? A. No, not that far before.

Q. Well, a week before, would you say?

A. Within the week before.

Q. And were you present at that meeting?

A. I was.

Q. Which took place in Mr. Willard's office?

A. On of them—there were several meetings.

Q. There had been several meetings before?

A. Well, there had been several of the employees had been in there and——

Q. To see Mr. Willard? (No answer.)

(Testimony of Merton Kirkwood Stout.)

Q. How many meetings had you attended up to the time—prior to the time at which Mr. Osborne showed you how to keep your minutes?

A. Prior to that?

Q. Yes, how many meetings had you had with Mr. Willard before that? A. I know of one.

Q. When was that meeting, if you can remember?

A. After the plant started operations. [1083]

Q. The plant had not started operations yet, had it?

A. I say after the plant had started operations, when I was in there.

Q. Weren't you in a meeting with Mr. Willard before the plant started to operate?

A. We had no meeting with Mr. Willard before the plant started operations, because the employees did not know who were going to be employed, so we didn't consider ourselves employees until after the plant had started operations.

Trial Examiner Mouritsen: Mr. Witness, the record indicates so far that the operations of the plant started for that season on October 29, 1941.

The Witness: I say we had no meeting with Mr. Willard that I attended.

Q. (By Mr. Ryan) That you attended?

A. That I attended.

Q. Now, you are saying there was none that you attended before that, is that right?

A. I know none of this I had anything to do

(Testimony of Merton Kirkwood Stout.)

with came up until after the plant started. I am positive of that fact.

Q. When did you get your by-laws for the Association?

A. We had been working on that ever since we agreed to—I would say from around—well, right directly after this meeting with the A. F. of L. when I decided I didn't like the set-up there.

[1084]

Mr. Petersen: May I ask the latter part of the answer be stricken as not responsive.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Ryan) I believe you testified that you went to Mr. Whitelaw's, is that right, to get some advice? A. I did.

Q. And get some material on forming an association? A. I did.

Q. What was that—was that a short time after you had joined up with the A. F. of L. or made application for membership in the A. F. of L?

A. It was.

Q. About how long would you say, Mr. Stout?

A. I would say within a week.

Q. And at that time what material did you obtain from Mr. Whitelaw?

A. We got a constitution and by-laws of the Kramer Baking Company and I got a working agreement from the Kramer Baking Company's Association.

(Testimony of Merton Kirkwood Stout.)

I also got a copy of the by-laws and constitution of the Imperial Ice Company and a copy of one of the contracts that they had worked on in their agreement with the Imperial Ice Company.

Q. After you got that material from Mr. White-law, did you testify that you then, thereafter, the next day or so, had [1085] a meeting at the plant with a few of the boys out near the parking lot where the cars are parked?

Trial Examiner Mouritsen: Do you understand the question?

The Witness: Maybe not in the way he said it.

Trial Examiner Mouritsen: Read the question.

(Question read.)

The Witness: I did.

Q. (By Mr. Ryan) And with whom did you have a gathering or meeting?

A. I believe Tom Herring and George Harlan—the three of us that were particularly interested in organizing an employees association, after the plant was started up, to try and get our constitution and by-laws in working order by the time it would start up.

Q. What did you do and say out there at the cars that day—out where the cars were parked?

A. I don't know—one thing was said that we would go ahead—I would work on this and draw it up and they agreed to that and when we got it drawed up in a reasonable form and the plant started up, then we would have something for a basis to start our association on.

(Testimony of Merton Kirkwood Stout.)

Q. Did Mr. Harlan and Mr. Herring tell you on that occasion out near the cars when you were discussing this material that you had gotten from Mr. Whitelaw, that you should go [1086] ahead and draw up something from that?

(No answer.)

Q. You and Mr. Whitelaw? A. Yes, sir.

Q. Is that what they told you? A. Yes.

Q. And you proceeded to do that, did you?

A. I did.

Q. You went up to Mr. Whitelaw's and you worked them out together, did you?

A. No. I drew up what I thought would be a working basis, and then I took that up there.

Q. To Mr. Whitelaw's office? A. Yes.

Q. About how long was it after this time that you had the meeting down at the cars, where the cars were parked?

A. Oh, I will say three or four days.

Q. Then you had a meeting at Mr. Whitelaw's office? A. I did.

Q. What took place up there?

A. I brought what I had up there and showed it to him and some things he didn't think were correct and he rephrased them, wrote them out in different form, and had them typed according to the division he thought they ought to come under.

Q. He did that in his office? [1087]

A. Yes, sir.

Q. Or had it done in his office?

(Testimony of Merton Kirkwood Stout.)

A. Yes, sir.

Q. And after you had gotten the material—after it was typed up in his office there, what did you do next?

A. We took the one that said “Constitution and By-Laws” and the one that said “Contract” to be signed by Mr. Willard, I took a copy of that over home and we used that later on as a basis of our negotiations with Mr. Willard, after we started the plant. I think you say that was on the 29th of October when the plant started.

Q. Mr. Stout, I show you what is in evidence as Respondent Ice Company’s Exhibit 3 and ask you to look at it and tell me if you know what it is (handing exhibit to the witness).

A. It was among the first proposals given to Mr. Willard. Whether it was the first one in writing I wouldn’t say, but it was among the first ones.

Q. Is that what you obtained from Mr. Whitelaw, the typed pages? Are they what you obtained from Mr. Whitelaw on this occasion when you told about being up in his office and he typed it up for you?

A. Part of it is.

Mr. Petersen: A little louder.

The Witness: The typed pages are. [1088]

Q. (By Mr. Ryan): Whose writing is on this white sheet which is written in ink?

A. That is mine.

Q. Is that your writing? A. Yes, sir.

Q. When was that put on there?

A. That was put on there while the employees

(Testimony of Merton Kirkwood Stout.)

were making—we were trying to get up that agreement and what we put into this particular paragraph in the agreement, that was our main point of—well, how would you say that—the main trouble with the wage scale, the wage and hour scale—how we would adjust that.

Trial Examiner Mouritsen: I think you said, Mr. Witness, when you went up to Mr. Whitelaw's office on this occasion and worked out the by-laws and constitution, that you also worked on some form of a working agreement or proposal from the union, is that right?

The Witness: From the——

Trial Examiner Mouritsen: Association.

The Witness: From the Imperial Ice Company Association and the Kramer Baking Company Association, four hours. [1089]

Trial Examiner Mouritsen: Well, what I want to know is this the document that you worked out on that occasion with Mr. Whitelaw?

The Witness: I don't believe it is. It is a form that he had there from some of these other companies that we filled in part of, and I think we have one that we worked out and then a little later on there was another one worked out—the one that we signed with Mr. Willard.

Trial Examiner Mouritsen: Do you know where the first one is that you worked out with Mr. Whitelaw on that occasion?

The Witness: I think I have it here.

(Testimony of Merton Kirkwood Stout.)

Mr. Ryan: Would you look, Mr. Stout, and see if you have it?

(The witness handed a document to the Trial Examiner.)

Trial Examiner Mouritsen: Give them to Mr. Ryan.

Mr. Smith: May we see them, Mr. Ryan?

Mr. Ryan: Surely.

Trial Examiner Mouritsen: Mr. Witness, do I understand this document that you have produced is the original document that you and Mr. Whitelaw worked out?

The Witness: That is the original, yes.

Trial Examiner Mouritsen: That is the first one.

The Witness: First one. This one here was the form he had in his office, and he thought we could go ahead with that until we could get this—until we could get it completely [1090] typed out.

Trial Examiner Mouritsen: You mean this other document that Mr. Ryan showed you?

Mr. Ryan: Ice Company Exhibit 3.

The Witness: This I don't believe we worked up. I think it was something he had there, according to my recollection of it, and that is the first one that he drew up in full. That is my recollection of it.

Trial Examiner Mouritsen: What I want to know is, was this the first one that you had—that is Respondent's 3, was that the first one that you had, or was this one?

The Witness: 3 was the first one we had and presented to Mr. Willard.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: Well, is that the one that you and Mr. Whitelaw worked out on this first occasion when you were up to see him about a proposal?

The Witness: Yes, he gave me a part of it, and I gave him part of it and we worked this out.

Trial Examiner Mouritsen: Well, is the part that you worked out this part in longhand?

The Witness: Yes.

Trial Examiner Mouritsen: In black ink.

The Witness: Yes, in longhand, and I believe this was written by Mr. George Harlan.

Trial Examiner Mouritsen: You mean the pencil or the [1091] whole thing—do you mean the writing in pencil on the yellow sheet, or the whole thing including the ink?

The Witness: I believe—I think—I don't know—I don't know the writing.

Trial Examiner Mouritsen: You are not sure who put the pencil notation on the paper.

The Witness: George Harlan presented it and he made notations on the things that we would later on put in our next agreement.

Trial Examiner Mouritsen: Well, you say George Harlan presented that. Did he present it at a meeting where you were present?

The Witness: He did.

Trial Examiner Mouritsen: Was that a meeting with Mr. Willard?

The Witness: With Mr. Willard.

(Testimony of Merton Kirkwood Stout.)

Mr. Ryan: Would you look, Mr. Stout, and see if you have it?

(The witness handed a document to the Trial Examiner.)

Trial Examiner Mouritsen: Give them to Mr. Ryan.

Mr. Smith: May we see them, Mr. Ryan?

Mr. Ryan: Surely.

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(Testimony of Merton Kirkwood Stout.)

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The Witness: George Harlan presented it and he made notations on the things that we would later on put in our next agreement.

Trial Examiner Mouritsen: Well, you say George Harlan presented that. Did he present it at a meeting where you were present?

The Witness: He did.

Trial Examiner Mouritsen: Was that a meeting with Mr. Willard?

The Witness: With Mr. Willard.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: And that meeting took place after you had secured this document from Mr. Whitelaw?

The Witness: Yes; after we secured this from Mr. Whitelaw and in the meantime we worked this up and then later on we worked up the one that is now signed by Mr. Willard and by the president and vice president and secretary.

Trial Examiner Mouritsen: Now, to get it clear, this document that you presented here today was prepared after [1092] Respondent's Exhibit 3, which was this document, was prepared?

The Witness: Yes.

Trial Examiner Mouritsen: Now, how long after, do you know?

The Witness: I believe, if my memory is correct, it was probably a week or so after this one was completed.

Trial Examiner Mouritsen: Well, now, after you got this document, that is Ice Company's Exhibit 3, from Mr. Whitelaw, what did you do with it then?

The Witness: After I got this part here, I took this over and the bargaining committee agreed to these facts that were wrote on that. I wrote down "agreed to them" that we would—that they would be turned in on this particular subject as to wages and working conditions, and that later on we would have a full typewritten agreement written out by a lawyer and present that to him.

Trial Examiner Mouritsen: Were you ever present at any meeting with Mr. Willard where this Re-

(Testimony of Merton Kirkwood Stout.)

spondent Ice Company's Exhibit 3 was presented to him as a basis for discussion?

The Witness: I was. [1093]

Trial Examiner Mouritsen: I think you said October 30th and November 19th, 1941, is that correct?

The Witness: I could say exactly by looking at the book.

The bargaining committee went to Mr. Willard several times presenting different ones of these agreements, and we couldn't reach a conclusion. The bargaining committee left and we tried to make out something from what we gathered he would favor and what we thought might be to our advantage that he would sign and we could sign and do ourselves justice too. [1094]

Q. (By Mr. Ryan): I believe you stated that during the negotiations with Mr. Willard the question of this closed shop proposition, which I shall refer to as "a closed proposition"—it may not be exactly that, in your contract, Paragraph 16, was discussed, is that right? A. It was.

Q. I show you Board's Exhibit 5, which is the agreement entered into between the Employees Association and the company and which became effective November 1, 1941.

I direct your attention to paragraph 16.

(Handing exhibit to witness.)

I believe you stated that at first when you discussed that with Mr. Willard he was opposed to it, is that right?

(Testimony of Merton Kirkwood Stout.)

A. I believe he was opposed to a closed shop. I believe the distinction made between an open shop and a closed shop is a closed shop you have to be a member before you can become an employee. That is a closed shop. An open shop, the way I remember, if that is correct, within a given or stated length of time an employee must become a member of the Association or have an opportunity to retain his job.

Q. All right. You have given us your definition. Now, [1096] can you tell us whether or not Mr. Willard at any time ever objected to the proposition which is in the contract as Paragraph 16?

A. Not to 16.

Q. Never objected to that?

A. (No answer).

Trial Examiner Mouritsen: You will have to speak up.

The Witness: I said not to 16.

Q. (By Mr. Ryan): Not to that paragraph? That was agreeable to him from the first time, was it?

A. That we proposed it, if my memory serves me.

Q. And do you know when you first proposed it to Mr. Willard?

A. No, I couldn't say exactly the first time. If there was any of the old agreements around that we worked on it would be in them.

Q. But you know that he agreed to it when it was in the form that is there, is that right?

A. Yes, sir.

Q. That he never objected to it?

A. No.

(Testimony of Merton Kirkwood Stout.)

Q. At any time?

A. My recollection of it in this form he never objected to it. [1097]

Redirect Examination

Q. (By Mr. Yeager): I will ask you if you have seen Employees Association Exhibit No. 3 for identification.

Mr. Ryan: I would like to ask this witness a few questions before he is shown this exhibit.

Mr. Yeager: That is all right.

Voir Dire Examination

Q. (By Mr. Ryan): Mr. Stout, did you read over—first of all, this is the constitution.

Mr. Yeager: Yes.

Q. (By Mr. Ryan): Did you read over the constitution of the Holtville Ice Company Employees Association and analyze it prior to its being adopted by the Association? A. I had.

Q. Did you understand the provisions?

A. Well, in most respects I would say I did.

Mr. Ryan: O. K.

Q. (By Mr. Yeager): I show you Exhibit No. 3 for identification of the Employees Association, and ask you if you have seen that before. [1127]

(Handing exhibit to the witness.)

A. I have.

Q. And where did you first see that exhibit?

A. If I remember rightly in Mr. Whitelaw's office.

(Testimony of Merton Kirkwood Stout.)

Q. And when was that?

A. When I was over there seeking advice on how to start drawing up the constitution and by-laws.

Q. And was this given to you? A. It was.

Q. And was this one of the papers that was used as a basis for your constitution?

A. That was one of them.

Q. Do you know whether any paragraphs in this constitution were copied into your constitution or not—in the constitution of the Employees Association?

A. I would not say whether it was copied word for word, but the general meaning of them was.

Mr. Yeager: That is all.

I would like to introduce this as Employees Association Exhibit No. 3.

Mr. Whitelaw: You will have to furnish extra copies.

Mr. Yeager: Yes.

Trial Examiner Mouritsen: What is the purpose?

Mr. Yeager: The purpose is—do you want this in the record? [1128]

Trial Examiner Mouritsen: Sure.

Mr. Yeager: The purpose of this is—one of these paragraphs was copied directly from—one of the paragraphs in the Employees Association's constitution was copied from this constitution but was copied incorrectly in that one whole line was left out, and I am going to bring out from a subsequent

(Testimony of Merton Kirkwood Stout.)

witness the fact that that was done through inadvertence.

Trial Examiner Mouritsen: I will receive it as Employees Association Exhibit No. 3 in evidence.

(Thereupon the document heretofore marked as Employees Association Exhibit No. 3 for identification, was received in evidence.)

EMPLOYEES ASSOCIATION EXHIBIT NO. 3

Constitution of the Cramer Baking Company

Employees Association

Imperial and Yuma Counties District

Preamble

To unite into one organization employees of the Cramer Baking Company, a corporation, in Imperial and Yuma Counties, to promote cooperation between employer and employees regarding hours of labor, wages, working conditions, safety and accident prevention, health, welfare, efficiency and harmony of operation, and all other matters affecting employees' interests shall be the aim and purpose of this association.

Article I

Name

The name of this organization shall be the Cramer Baking Company Employees Association, Imperial and Yuma Counties District.

Article II

It shall be the object of this association to maintain, through representatives of its own choosing, a

(Testimony of Merton Kirkwood Stout.)

continuous medium for collective bargaining for its members with the management of the company on hours of work, wages, working conditions and other matters of employment.

Article III

Membership

Any employee who does not have the right to hire and/or fire shall be eligible for membership.

Article IV.

Section 1. The officers of this association shall be a president, vice-president, a secretary-treasurer. The powers, duties term of office and manner of election and removal of officers shall be provided as in the By-Laws.

Section 2. Only regular members in good standing shall be eligible to hold office.

Article V.

Section 1. The affairs of this association shall be administered and governed by a General Committee consisting of the president, the vice-president, the secretary-treasurer, and two members at large, to be elected from the membership.

Section 2. The General Committee will be responsible for the transaction of business with the management of the company.

Section 3. The General Committee is authorized to negotiate for this association with the management of the company written agreements covering such collective bargaining arrangements as may be required, and the president and secretary-treasurer

(Testimony of Merton Kirkwood Stout.)

are authorized to execute such agreements after they have been submitted to and approved by the members of this association.

Article VI.

Meetings

Section 1. Meetings of this association shall be held at such time and place as designated in the ByLaws.

Article VII

Finances.

Section 1. The revenues of this association shall be governed as defined in the By-Laws.

Article VIII

Amendments

Section 1. This constitution may be amended by a majority vote of the members, provided, however, that such amendment does not conflict in any manner with the constitution of this association.

Article IX

Authority

Section 1. The rules contained in "Roberts Rules of Order, Revised," shall govern this association in all cases in which they are applicable and in which they are not inconsistent with the By-Laws or special rules of this association.

Article X

Liabilities

Section 1. Excepting as may be otherwise specified in the By-Laws this association shall assume no

(Testimony of Merton Kirkwood Stout.)

obligations, financial or otherwise, of any of its members.

In Witness Whereof, the undersigned employees do hereby accept said constitution as their constitution and agree, each with the other, to abide by the same.

.....

.....

.....

.....

Mr. Yeager: That is all. [1129]

Q. (By Mr. Ryan): Mr. Stout, I believe you stated that some of those persons who signed the constitution and by-laws came to you and advised you that they were going back to work for the company in the 1941-1942 season, is that right? [1148]

A. Some of them came to me and stated that they were going back to the company to be rehired, yes.

Q. Can you name any particular individual that did that, who signed the constitution and by-laws, who came to you and told you he was going back?

Mr. Whitelaw: To which we object. It is already in evidence.

Trial Examiner Mouritsen: Other than Faulkner, I think he said.

The Witness: I think Morgan did.

Q. (By Mr. Ryan): Let us take Faulkner first.

(Testimony of Merton Kirkwood Stout.)

Where were you when he came to you on this occasion and told you he was going back to work?

Mr. Smith: Just a minute. That is objected to. I don't recall the witness testifying that Faulkner came to him.

Q. (By Mr. Ryan): Did Faulkner come to you and tell you he was going back to work and signed the by-laws?

A. I don't know whether he did personally, but I was told that he had. It seems to me like he come to me personally and told me he had.

Q. Do you remember what he said to you in that regard?

A. His exact words I don't recall, but the gist of the matter was that he would be employed in the future, in the near future by the company. [1149]

Q. Did he say anything to you as to why he had come to you to give you that information?

A. The way that I understood it all of the employees before they were entered on our—or could write their names on our constitution and by-laws, had to have been told by the management, Mr. Willard, or informed by somebody, that they were to be re-employed the coming season.

Q. Who made up that provision?

A. The employees themselves said they would not accept anybody in the Association that was not to be employed in the next year on account of other things coming up before that, indicated that some were going to be laid off and we didn't know exactly who—it hadn't been told to us in so many words,

(Testimony of Merton Kirkwood Stout.)

but from other conversations that had been taken up pointed to certain ones who would not be re-employed.

Q. Faulkner had not been at any of your meetings of the Association, your own Association meetings prior to coming to you and telling you that he was going back to work, or had he?

A. I couldn't say for sure.

Q. Do you know how he happened to know that he should come to you and tell you that he was going back to work?

A. Well, it was known that George Harlan and Tom Herring and I had the by-laws and constitution and that we had to have everybody sign that before they were considered an [1150] employee, or, rather, that they had to tell us that they were an employee before they could sign that.

Q. You had an understanding with the company about that?

A. No, among ourselves.

Q. Now, how did the other people know that?

A. We had told several of them around there, but I couldn't mention offhand who, that our Association was to be restricted to only employees and that we would have no outsiders listed in any way that wasn't an employee.

Q. Do you remember any conversation with any employee who came to you and told you that he was going to work during the 1941-42 season?

Mr Smith: Objected to as having been asked and answered twice before

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: I will overrule the objection.

The Witness: Will you read the question?

(Question read.)

Mr. Whitelaw: You mean other than the conversation he had with Faulkner, Mr. Ryan? We object to the form of the question. Mr. Ryan refuses to answer. We object on the ground it is not intelligible. He just got through asking about Faulkner. Now, he is asking if he remembers any conversations he had with any employee.

Trail Examiner Mouritsen: I will overrule the objection. [1151] The witness can state whether he had any.

The Witness: As to actual words that I said between any one employee I don't know, but I talked with several of them.

Trial Examiner Mouritsen: About going back to work?

The Witness: About going back to work, and the date they were to be back on duty.

Mr. Ryan: I have no further questions.

Redirect Examination

Q. (By Mr. Yeager) Mr. Herman Smith or Pete Pool or Mr. Willard, did they ever notify you as to what men were going to be employed for the 1941-42 season?

A. They did not. The only way I knew who would come back was when they came to some one of us three that had the by-laws and constitution

(Testimony of Merton Kirkwood Stout.)

and told us that they were coming back—they were sure they were coming back. [1152]

Redirect Examination

Q. (By Mr. Yeager) Mr. Stout, was this final agreement that was entered into between the Employees Association and Mr. Willard, prepared in its final form before this meeting took place at which it was approved? A. It was.

Q. Do you know whether any employees of the Holtville Ice Company were shown the final agreement prior to that meeting? ----

A. I think they all were.

Q. And where were they shown it?

A. I couldn't say. This had been passed on, I believe, at a meeting. I think it says in the record here—shall [1158] I read what the record says to that fact?

Trial Examiner Mouritsen: I am going to read into the record the November 25, 1941 minutes.

This page contains the record of the meeting of November 25, 1941, of the Association; is that correct?

The Witness: Yes.

Trial Examiner Mouritsen: You check me as I read it into the record:

“November 25, 1941, special wage scale meeting.

“The meeting was called to order by V. P. Tom Herring.

“Present: Tom Herring, Lloyd Gettle, Simon Hogue, Dick Ireland, M. K. Stout and Pete Drinkard.

(Testimony of Merton Kirkwood Stout.)

“After discussion of agreement proposed by employer it [1159] was moved by Simon Hogue and seconded by Lloyd Gettle that members present should agree to the bargaining committee signing the agreement for the year beginning November 1, 1941, and ending November 1, 1942. Motion carried unanimously.

“Secretary’s minutes of November 19th read and accepted.

“There being no other business, meeting was adjourned.

“M. K. Stout, Secretary-Treasurer.”

Did I read that correctly, Mr. Stout?

The Witness: Yes.

Q. (By Mr. Smith): I have a question, Mr. Stout. You refer in there to a contract submitted by “employer.” Did the employer submit any contract to you?

A. Why, he agreed to the final contract that we sent in. That is the way it was submitted by us and he returned our contract back to us saying that he would agree to this contract written up in this form. [1160]

Q. All right. Now, I have a document here I am going to ask the reporter to mark as Respondent Ice Company’s Exhibit No. 7.

(The document referred to was marked as Respondent Ice Company’s Exhibit No. 7, for identification.

Q. (By Mr. Smith): Now, I will show you Respondent Ice Company’s Exhibit No. 7, Mr.

(Testimony of Merton Kirkwood Stout.)

Stout, and I will ask you to look at the last half of paragraph 7.

Mr. Peterson: To which I am going to object.

Q. (By Mr. Smith): Which reads:

“Extra help and common labor without experience shall be paid 60 cents per hour on a 40-hour week. There shall be no deductions other than directed by state, federal and city authorities”, and over to the side in pencil it is marked “55”, and I notice in the border of Exhibit 5, which is the complete contract, “Extra help and common labor without experience shall be paid 55 cents per hour on a 40-hour week”, and I will ask you if that isn’t the only change that you know of that was made by Mr. Willard. [1162]

The Witness: That one was made but I don’t know whether that was the only one made or not.

Q. (By Mr. Smith): Well, I will offer in evidence Respondent Ice Company’s Exhibit 7 for identification. The document will speak for itself.

Trial Examiner Mouritsen: There is no foundation laid for Exhibit 7.

Mr. Smith: All right.

Q. (By Mr. Smith): Mr. Stout, I will now ask you to look at Respondent Ice Company’s Exhibit 7, and state whether or not you have seen that document before. A. I have.

Q. Where and when?

A. I had it made up in Mr. Whitelaw’s office.

[1163]

(Testimony of Merton Kirkwood Stout.)

Q. And was it ever submitted to Mr. Willard by the bargaining committee? A. It was.

Q. And when it was submitted to him was there any pencil notation on the left-hand column of the second page which says, “.55”?

(No answer.)

Q. What is your answer? A. Yes.

Q. Do you know who put that there?

A. No, I don't. I think it was put there because we had an argument over to give first and second and third year men more pay than the extra men got——

Trial Examiner Mouritsen: The question was, do you know who put it there.

Q. (By Mr. Smith): Do you know who put the “.55” there in pencil?

A. I believe he asked—I couldn't say for sure the conversation, but I believe he asked George Harlan that he change that, but I don't know whether George marked that or whether he marked that—Mr. Willard marked that as a change when we should redraft it on account of giving one man more pay than the other one. [1164]

Q. But it is your testimony, is it, that you presented this copy, or one like it, Exhibit 7, to Mr. Willard? A. It is. [1165]

Q. (By Mr. Smith): Mr. Stout, during the recess did you compare Board's Exhibit 5 with Ice Company's Exhibit 7 for identification?

A. I did.

(Testimony of Merton Kirkwood Stout.)

Q. And I am showing you Respondent Ice Company's Exhibit 7, and I will ask you if that was presented to Mr. Willard of the Ice Company before the final draft of the agreement, which is Board's Exhibit 5? [1166]

A. It was.

Q. And what changes were made between Board's Exhibit 5 and Ice Company's Exhibit 7?

A. I find two different changes in that paragraph. One is in regard to relief help. [1167]

Mr. Smith: All right. I will offer into evidence Ice Company's Exhibit No. 7 to show the contract was submitted to the Ice Company by the Employees Association.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Petersen: No objection.

Mr. Ryan: May I have the offer read again?

(Offer read.)

Mr. Ryan: You mean when? [1168]

Mr. Smith: During their last meeting.

Mr. Petersen: May we not state for the record it is an amended proposal amending the first proposal?

Mr. Ryan: That was before it was amended and as suggested by Mr. Willard.

Mr. Smith: Yes, suggested two final changes that were finally written up.

Mr. Ryan: I think it is clear now what it is so I will not object to it.

Mr. Petersen: No objection.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: It is received as Respondent Ice Company's Exhibit 7.

(Thereupon the document referred to, heretofore marked for identification as Respondent Ice Company's Exhibit 7, was received in evidence. [1169])

RESPONDENT ICE COMPANY'S EXHIBIT NO. 7

AGREEMENT

This Agreement, made and executed this first day of November, 1941, by and between the Holtville Ice & Cold Storage Company, and its Successors and Assigns, hereinafter referred to as the Employer, the singular to include the plural, and the Holtville Ice & Cold Storage Company Employees Association, hereinafter referred to as the Association.

Witnesseth: That whereas both of the above-named parties desire to enter into an agreement respecting wages, hours, working conditions, and other matters affecting operation of that certain business known as Holtville Ice & Cold Storage Company, and situated in Holtville, State of California, and

Whereas, the Employer hereby is willing to recognize the Association as the representatives of the employees of the Holtville Ice & Cold Storage Company.

Now, therefore, for and in consideration of the mutual covenants to be kept and performed by each of the parties hereto, it is understood and agreed as follows:

(Testimony of Merton Kirkwood Stout.)

1. The Employer recognizes the Association as the sole and exclusive representative of the employees of the Employer for the purpose of collective bargaining during the life of this agreement.

2. The Association agrees not to engage in sympathetic strikes.

3. The Association agrees that it will use all legal and legitimate means to see that contracts between its members and the Employer are strictly adhered to and faithfully kept.

4. There shall be no strike or other suspension of work by Association members during the life of this agreement.

5. It is mutually agreed that any differences that may arise between the parties to this agreement shall be settled by arbitration in the following manner: Each party shall appoint two representatives who may decide the issue by a three-fourths vote, which shall be final and binding on the parties, or failing to so agree, shall by a three-fourths vote elect a fifth person to act with them. The decision of the majority of the five members of this board of arbitration shall be final and binding on both parties.

6. Forty hours shall constitute a week's work.

7. The wage scale shall be as follows:

		Monthly Earnings	
Rate per hour		40 hrs.	48 hrs.
Operators			
First year	66½c	\$115.00	\$150.00
Second "	69c	119.00	155.00
Third "	72c	125.00	162.44

(Testimony of Merton Kirkwood Stout.)

Store Room and Platform

First year	57½c	\$ 99.48	130.00
Second “	60c	103.80	135.00
Third “	62c	107.00	140.00

Relief help shall be on the same scale of wages as the person relieved. Extra help and common labor, without experience, shall be paid 60c per hour on a forty hour week. There shall be no deductions other than directed by State, Federal and City authorities.

[Pencil Notation in Margin: .55*]

8. An employe having a year's record of employment with the Company will be granted two weeks' vacation with pay. No sick leave is granted but each case will be decided on its merits by the Association and the Company.

9. The Association covenants that its membership has ratified this agreement and same has been approved by the officers of the Association.

10. This Agreement shall remain in full force and effect up to and including the first day of November, 1942, and continue thereafter from year to year unless one party notifies the other in writing ninety days in advance of the expiration date, of a desire to change the conditions of this agreement.

11. Overtime at the rate of time and one-half of regular pay shall be paid on all hours per day worked in excess of those set forth in paragraph six hereof.

12. It is understood and agreed that in the event mandatory laws or governmental rules or regulations applicable to, or in conflict with any of the provisions of this agreement, shall become effective

(Testimony of Merton Kirkwood Stout.)

and binding upon the parties hereto with respect to such conflicting provisions, this Agreement shall be subject to modification to the extent required thereby.

13. No employee shall have his or her wages reduced or hours of labor increased by the execution of this agreement.

14. No member of the Association shall be discharged for upholding Association principles, or for doing committee work in the interest of the Association after regular working hours.

15. The Employer agrees to make payroll deductions for monthly dues and fees of the Association members in such amounts as the Association may direct, upon being furnished with membership authorization forms properly signed by the member and the Secretary of the Association, and such collections will be paid over to the Association monthly. Provided, however, that the Employer will be under no obligation to make a payroll deduction for any employee after the Employer has been notified in writing by the Secretary of the Association and the member involved that such employee no longer wishes deductions made. All such deductions so made by the Employer are to be considered as an advance payment of the dues of the Association member for the ensuing monthly period.

16. Any person becoming an employee of Employer shall within fifteen days become and remain a member in good standing of the Association.

(Testimony of Merton Kirkwood Stout.)

17. No existing privileges which have hereto been extended to the employees shall be terminated by the signing of this agreement.

18. Employer shall have the right to discharge, without redress, for dishonesty, drunkenness, drinking on duty, or incompetence.

19. The Employer shall supply bulletin board space for the use of the Association in posting officially signed Association bulletins.

In Witness Whereof, the parties hereto have set their hands.

HOLTVILLE ICE AND COLD
STORAGE COMPANY

By

Its President

HOLTVILLE ICE AND COLD
STORAGE COMPANY EM-
PLOYEES ASSOCIATION

By

Its President

By

Its Vice-President

By

Its Secretary-Treasurer.

Q. (By Mr. Petersen): On the contract, Respondent's No. 7, when this was drawn up, was this drawn up between yourself and Mr. Whitelaw?

A. It was. [1170]

Trial Examiner Mouritsen: On the record. Mr.

(Testimony of Merton Kirkwood Stout.)

Witness, I show you a document marked A. F. of L. Exhibit 2, and I will ask you if that document was prepared by Mr. Whitelaw at your request. (Handing paper to the witness.)

Mr. Smith: We submit the witness should have an opportunity to read it.

Trial Examiner Mouritsen: I am certainly not rushing him in any way.

Mr. Smith: Go ahead and read it before you answer.

The Witness: This one or similar to it was drawn up.

Trial Examiner Mouritsen: Was that prepared by Mr. Whitelaw at your request?

The Witness: Yes.

Trial Examiner Mouritsen: Was that prepared before the time when Respondent Ice Company's Exhibit 7 was prepared?

The Witness: It was.

Trial Examiner Mouritsen: Now, are these documents, Respondent Ice Company's Exhibit 3, and 7, and Board's 5, and this A. F. of L. Exhibit 2 for identification, all of [1173] the proposals which the Association submitted to the Ice Company?

Mr. Smith: Well, just a minute. I object to that. It hasn't been shown that this——

Trial Examiner Mouritsen: Am I stating facts not in evidence?

Mr. Smith: It has not been shown that the A. F. of L. Exhibit 2 was ever submitted to the Ice Company.

(Testimony of Merton Kirkwood Stout.)

Trial Examiner Mouritsen: Answer the question, I will overrule the objection.

The Witness: I believe I sent one like this, or similar, as far as I remember. There was one similar to this.

Trial Examiner Mouritsen: But those four documents are the only proposals, written proposals, that were ever submitted to the Ice Company by the Association?

The Witness: No; there was another one around here that was submitted and it is the one that has been argued over about who had it. I believe that is part of it there (indicating).

Trial Examiner Mouritsen: Well, is it this document in handwriting?

The Witness: The part pertaining to paragraph 7 was in handwriting.

Trial Examiner Mouritsen: Who prepared that? [1174]

The Witness: This is mine. This was prepared by me in my handwriting.

Trial Examiner Mouritsen: Was this document submitted?

The Witness: One similar to this form here.

Trial Examiner Mouritsen: That is A. F. of L. Exhibit 2, is that correct?

The Witness: Yes. And this one was presented in form similar to this.

Trial Examiner Mouritsen: Let us have that marked A. F. of L. Exhibit 2-A by the reporter.

(Testimony of Merton Kirkwood Stout.)

(The document referred to was marked A. F. of L. Exhibit 2-A for identification.)

Trial Examiner Mouritsen: Now, were those documents, Respondent Ice Company's Exhibits 3 and 7 and Board's 5 and A. F. of L. Exhibits 2 and 2-A all of the proposals in writing that you ever submitted or that the Association ever submitted to the Ice Company?

Mr. Smith: That question is objected to in that it assumes facts not in evidence.

Mr. Petersen: I will agree with counsel that Board's Exhibit 5 was not submitted to the company as a document.

Trial Examiner Mouritsen: Do you object to it on the ground he said this one is similar—2 or 2-A?

Mr. Smith: I didn't understand the witness to testify A. F. of L. Exhibit 2 was ever submitted to the Ice [1175] Company.

The Witness: I said one like this or similar to it, but I didn't say that this page here had been submitted.

Trial Examiner Mouritsen: That is what I understand, but it was one just like it.

The Witness: Similar. I don't remember whether it was just exactly like it or not.

Trial Examiner Mouritsen: It had substantially those provisions in it?

The Witness: Substantially the same things in it. [1176]

Q. (By Mr. Smith): Did you ever present any-

(Testimony of Merton Kirkwood Stout.)

thing to Mr. Willard without taking it to the Association and have the boys pass on it?

A. I believe it is said in our first minutes that we were to bargain with him and the final word was to be returned to the members for final agreement on. We might go to Mr. Willard two or three times with the same *on* in trying to reach a conclusion on it, whether it would be really rejected or not. [1180]

Trial Examiner Mouritsen: And you are also not sure whether it was merely rejected by the members and never presented at all, is that right?

The Witness: My impression was that it was submitted to Mr. Willard and returned to us, but I would not say for sure on account we had several times gone to him about this particular paragraph. [1184]

Q. (By Mr. Petersen): Did the union ever officially take any action or any group of employees?

A. It would have been taken up with the bargaining committee and the bargaining committee would tell at some meeting what Mr. Willard had rejected that we had proposed. It would be read to all members at the meeting, whatever was put in agreement that we took up as a proposal, and then we would take that up there and he might reject some parts and suggest others, and we would check these parts that he would reject and say what we could do to come to an understanding on those parts. [1187]

R. B. WHITELAW,

called as a witness by and on behalf of the Employees Association, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Yeager): Will you state your name? A. R. B. Whitelaw.

Q. And you are an attorney located in the City of El Centro? A. Yes, sir.

Q. And you heard the testimony of Mr. Stout in regard to meetings he had with you?

A. Yes, sir.

Mr. Ryan: Just a minute, pardon me for interrupting, Mr. Examiner. May we go off the record?

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.[1188]

Q. (By Mr. Yeager): Mr. Whitelaw, do you recall the first meeting you had with Mr. Stout in regard to this Employees Association?

A. I recall he came into the office; the date I don't recall.

Q. And did you furnish him with any papers at that time? A. I did.

Q. What were they?

A. I gave him copies of the constitution and by-laws, separate papers, of the Kramer Baking Company, and I also gave him the contract between the Employees Association in the Kramer Baking Company plus the copy of the constitution and by-laws, which was one paper, I believe, of the one now

(Testimony of R. B. Whitelaw.)

known as the California Electrical Company, Imperial Ice Division, Employees Association, and also a copy of the contract of that particular Association with its employer.

Q. Did Mr. Stout, subsequent to that time, when you furnished him with those papers, come back to your office? A. He did.

Q. And what did you do for him at that time?

A. Well, to get it chronologically I could not give it to you without checking my records, and I went back during the noon hour to try to check the log of my record. At that time I had just lost the girl clerk who had been with me for a great many years, by death, and I didn't have any [1189] substitute, and I was using what stenographers I could get at that time, so no record had been kept, so I couldn't give you the dates or what was done.

But he did come in again regarding the proposed contract with the Holtville Ice Company.

Q. And did he come in and indicate what sort of a constitution he wanted drawn up?

A. Yes.

Q. And did you draw up a constitution for him?

A. I did.

Q. For the Employees Association?

A. I did.

Mr. Petersen: May I ask that you have him elaborate on that a little bit—it is rather vague and ambiguous.

Trial Examiner Mouritsen: Go ahead, Mr. Yeager.

(Testimony of R. B. Whitelaw.)

Q. (By Mr. Yeager): I will show you Exhibit No. 2 of the Employees Association, and ask you whether that is the constitution you drew up for the Employees Association? (Handing paper to the witness.)

A. That is.

Q. Now, was that substantially a copy of another constitution that you had prepared for them, Mr. Whitelaw?

A. It is supposed to be an absolute copy except changing the name of the Employees Association. It is supposed to have been an absolute copy of the same form I used for the [1190] Kramer Baking Company.

Q. I will show you Employees Association Exhibit 3, and I ask you if that is the Kramer *Banking* Company constitution that you just now referred to. (Handing document to the witness.)

A. That is right.

Q. Now, I will refer to Article 2 of Employees Association Exhibit 3 and ask you whether or not you were instructed to prepare Exhibit 2—to prepare that paragraph of Exhibit 2 which is exactly the same as that paragraph of Exhibit 3.

A. Whether I was instructed or not, I was supposed to use this identical form and thought I had used the identical form, except changing the name of the Association. In other words, it is supposed to be a correct copy *or* Employees Association Exhibit No. 3.

Q. Will you note now whether that paragraph

(Testimony of R. B. Whitelaw.)

that I referred to, Article 2 on the Employees Association constitution, is the same?

A. It is not. There is a whole line left out under Article No. 2 on Exhibit No. 2, Employees Association Exhibit No. 2, as compared with Exhibit No. 3 of the Employees Association.

Q. Was that omission intentionally done or inadvertently done?

A. Done inadvertently and it is one of those things for [1191] which we blame our stenographer, which we should blame ourselves for not having checked.

Q. Did your stenographer prepare this final draft for the Employees Association?

A. Yes; some stenographer, whether it was the girl I used I don't know. I don't remember now. I tried to check this girl and couldn't determine who actually typed it for me.

Q. Then was there any wilful omission of a line there?

A. No, it was supposed to have been identical with Exhibit No. 3, with the change of name only.

Mr. Yeager: That is all.

Trial Examiner Mouritsen: Do you have any questions?

Mr. Ryan: Yes.

Cross Examination

Q. (By Mr. Ryan): Mr. Whitelaw, are you a member of the Associated Farmers?

A. I am not.

(Testimony of R. B. Whitelaw.)

Q. Were you ever a member of the Associated Farmers? A. Yes, I was.

Q. When did you become a member and how long did you remain a member?

A. Well, we had an association which wasn't a corporation, prior to 1936.

I think our firm of Whitelaw & Whitelaw continued its membership—I don't think we paid this year's dues. [1192]

Q. This last year?

A. Yes, and it is our intention now, to pay this year's dues—the firm of Whitelaw & Whitelaw.

Q. You have been a member then since some time prior to 1936 when it became incorporated, is that correct? A. That is correct, yes, sir.

Q. Was it incorporated in 1936?

A. I think—my recollection is, and I am just basing it on my recollection, it was some time in October of 1936.

Q. You were counsel for the Associated Farmers in getting the Association incorporated?

A. Yes, I was.

Q. And you were retained by the Associated Farmers as their counsel thereafter, were you not?

A. Up until last January a year ago—not since last January but 1942, at which time our services were discontinued.

Mr. Ryan: That is all.

Trial Examiner Mouritsen: Is there anything further of this witness?

Mr. Petersen: Nothing further.

(Testimony of R. B. Whitelaw.)

Trial Examiner Mouritsen: You say, Mr. Whitelaw, you cannot recall the date when they first came to see you about this.

The Witness: No, I doubt. I don't recall the date [1193] and I did my best to check it.

My statement went out, so far as we could find out, went out between the 1st and 10th of December, 1942, for the \$25 bill. That is the only record our office shows.

We keep a daily log but unfortunately it wasn't kept at that time due to the death of the girl.

Trial Examiner Mouritsen: Did any of the other representatives of the Association visit you in your office other than Mr. Stout?

The Witness: Yes, Mr. Tom Herring and I think Mr. Harlan came into my office. I wouldn't be sure as to Mr. Harlan, but I know Tom Herring did because I remember him, but I think Mr. Harlan came to my office prior to Mr. Stout coming to the office.

Trial Examiner Mouritsen: And did you give them any documents?

The Witness: My recollection don't go to whether I did or not. I couldn't say whether I did or not.

I know the matter was discussed with them and what they should and should not do, but whether I gave them any documents or not I don't know.

Trial Examiner Mouritsen: That is all of the questions I have.

Mr. Petersen: Just one question.

(Testimony of R. B. Whitelaw.)

Q. (By Mr. Petersen): I believe you heard Mr. Willard's [1194] testimony that he came to see you on advice of Mr. Smith as being a labor relations expert.

A. I heard him, yes.

Q. About what time?

A. I wouldn't know, Mr. Petersen, I didn't check my record to see when Mr.—I didn't check that at all.

Mr. Petersen: That is all.

The Witness: I had in my mind merely trying to find this date here and I didn't check that.

Trial Examiner Mouritsen: Do you recall how long before Herring came to see you that it was that Willard came to see you?

The Witness: I don't know whether it was before or after. I don't know what time it was.

Q. (By Mr. Petersen): Were you paid a retainer by Mr. Willard for your advice?

A. No, up until a good many years—for a good many years I was attorney for the Ice Company and then I was dropped and Mr. Smith was taken on, and he was their regular attorney for the Ice Company.

It was only on this matter, a special matter, that he came to see me. On the other matters he has always gone to Mr. Smith, as far as my knowledge goes.

Mr. Petersen: That is all.

Mr. Yeager: I am through. [1195]

Mr. Whitelaw: Call Mr. Bennett.

G. G. BENNETT,

called as a witness by and on behalf of the Associated Farmers, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Whitelaw): State your full name, please. A. G. G. Bennett.

Q. And where do you reside, Mr. Bennett?

A. South of Holtville, Imperial County.

Q. How long have you resided in Imperial County? A. Since 1927.

Q. What do you do, Mr. Bennett?

A. I am a farmer.

Q. Have you farmed all during this period?

A. Yes, sir.

Q. And you are still farming? A. Yes.

Q. Are you a member and do you hold an office in the Associated Farmers of Imperial County?

A. I do.

Q. And when did you first become a member or connected with that organization?

A. As soon as it was organized. I wasn't a charter member but I was on the first Board of Directors after the [1196] regular organization was set up.

Q. And how long have you been an officer or director in that organization since that time?

A. Continuously.

Q. And do you hold an office now?

A. I am—I do.

Q. What? A. President.

Q. And how long have you been president?

(Testimony of G. G. Bennett.)

A. I haven't checked the record but I think it was in the summer of 1937.

Q. And continuously since then?

A. Continuously since then, yes.

Q. You are familiar with the Articles of Incorporation of the Associated Farmers?

A. I am.

Mr. Whitelaw: I think I gave you a copy, Mr. Ryan.

Mr. Ryan: Yes, I have one.

Mr. Whitelaw: I will ask to have it marked as Associated Farmers Exhibit No. 1.

(The document referred to was marked as Associated Farmers Exhibit No. 1, for identification.)

Q. (By Mr. Whitelaw): I will show you an instrument marked Associated Farmers Exhibit No. 1 for identification and ask you if you know what that is. (Handing exhibit to the witness.) [1197]

A. It is the Articles of Incorporation.

Q. Of what?

A. Of the Associated Farmers of Imperial County.

Q. Do you know whether or not those Articles have been amended since that time?

A. No, they have not.

Q. This is a copy only. Do you know whether or not the original is on file in the office of the Secretary of State and a certified copy is on file in the County Clerk's office of Imperial County?

A. Yes, sir, it is.

(Testimony of G. G. Bennett.)

Mr. Whitelaw: I now offer Associated Farmers Exhibit 1 in evidence.

Trial Examiner Mouritsen: Any objections?

Mr. Ryan: No objection.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: It is received in evidence, as Associated Farmers Exhibit 1.

(Thereupon the document referred to, heretofore marked for identification, as Associated Farmers Exhibit No. 1, was received in evidence.) [1198]

ASSOCIATED FARMERS EXHIBIT No. 1

Articles of Incorporation of

Associated Farmers of Imperial County

Know all men by these present:

That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming, and we do hereby form, a nonprofit corporation, without shares of stock, under the provisions of Title XII of Part IV of Division First of the Civil Code of California, and we do hereby certify and declare:

1. The name of this corporation is and shall be Associated Farmers of Imperial County.

2. This corporation is a corporation which does not contemplate pecuniary gain or profit to the members thereof, the purposes for which this corporation is formed are:

(Testimony of G. G. Bennett.)

To protect, preserve and maintain American Institutions and ideals; to preserve the constitutional form of Government in both Nation and State; to oppose and combat any and all doctrines or practices which imperil the maintainence of these constitutional liberties; to protect American Schools and the constitutional privileges which the educational system of America has brought to all children; to fight against the infiltration of subversive doctrines into the educational system and into the Government; to combat the dictatorship of individuals or groups; to foster and encourage respect for and to maintain law and order, particularly by cooperation with local, state and national official and governmental agencies; to promote the prompt, orderly and efficient administration of justice; and to promote and protect the economic and agricultural welfare of the citizens of the United States and particularly of the Citizens of California.

3. The county in this state where the principal office for the transaction of the business of the corporation is to be located is Imperial County, Calif.

4. The number of directors of this corporation, who are hereby given the title of "Directors", shall be seven, but the number of directors may be increased or decreased by amendment of these articles or by a by-law adoption pursuant hereto, authority being hereby expressed granted to change the number of Directors by a by-law adopted in the manner provided in the by-laws.

(Testimony of G. G. Bennett.)

The names and addresses of the persons who are to act in th the capacity of Directors until the selection of their successors are:

Names	Addresses
William L. Apple	El Centro, California
Charles E. Nice	El Centro, California
C. H. Breon	El Centro, California
D. C. Scott	Holtville, California
Elmer M. Sears	Brawley, California
O. J. Bradshaw	El Centro, California
William T. Livingston	El Centro, California

5. The authorized number and qualifications of the members, the classes of membershipm the prop-erty rights of the members in the property of the corporation, the voting and other rights and priv-ileges of the members and of each class thereof, the liability for dues or assessments and the method of collection thereof shall be set forth in the by-laws.

In Witness Whereof: we have hereunto set our hands and seals this 26th day of October, 1936.

O. J. Bradshaw
 William L Apple
 William T. Livingston
 D. C. Scott
 Elmer Sears

.....

(Testimony of G. G. Bennett.)

State of California

County of Imperial

on thisday of....., in the year,.....
before me..... a Notary Public in and
for the County of Imperial, State of California,
residing therein, duly commissioned and sworn,
personally appeared

William L. Apple

Charles E. Nice

C. H. Breon

William T. Livingston

D. C. Scott

Elmer Sears

O. J. Bradshaw

known to me to be the persons whose names are
subscribed to the within instrument, and the ac-
knowledged to me severally that they executed the
same.

Witness my hand and official seal.

(Seal)

.....

Notary Public in and for the
County of Imperial, State of
California.

State of California

County of Imperial

Charles Nice, being first duly sworn, deposes and
says:

1. That he is the regularly elected Secretary of
the Associated Farmers of Imperial County, Inc.,
and as such is familiar with the constitution and

(Testimony of G. G. Bennett.)

By-Laws of said organization, its aims and purposes, the reason for its organization:

2. That the Associated Farmers of Imperial County, Inc. is organized and will operate exclusively for educational and patriotic purposes; that it is a non-profit organization, without capital structure; that its source of income is wholly and solely from contributions made by its member or by persons and/or parties and/or organizations interested in its program; that none of its income will revert to the benefit of any private stockholders or members, that such funds as it may from time to time possess will be used for the purposes hereinbefore set forth and as set in the Articles of Incorporation;

3. That the organization came into being as a result of a series of disturbances in the agricultural districts of the State; investigation of these disturbances showed conclusively that, almost without exception, the disturbances were caused and fomented by radical and/or communistic agitators, who came into the various agricultural districts of the State with the avowed purposes of bringing about so-called labor troubles among the workers.

4. That these agitators were affiliated directly with or were members of the Communist Party, U.S.A. and/or The Trade Union Unity League, and/or the Cannery and Agricultural Workers Industrial Union or similar organizations, affiliated with, subsidiary to or sympathetic to these organizations.

(Testimony of G. G. Bennett.)

5. The farmers of the State, as a result of their experiences, concluded that their interest could be best protected by organization of a non-profit corporation to which they could forward information relative to their difficulties and from which, in turn they could receive information as to developments throughout the State. Further, it is their intention to disseminate information to all of the people of the State as to the activities of communistic agitators and leaders, not alone in agricultural districts, but where ever such activities may be found; they will conduct a campaign of education in various civic organizations, groups and bodies, and present to these organizations facts of interest. The Associated Farmers of Imperial County, Inc., therefore requests that it be exempted from the payment of the franchise tax and any and all taxes and/or charges which a non-profit, educational, and patriotic organization may be legally and eithically entitled to.

.....
Secretary

Associated Farmers of Imperial County, Inc.

Subscribed and sworn to before me this.....
day of.....193....

.....

(Testimony of G. G. Bennett.)

Q. Now what, Mr. Bennett—withdraw that question.

Are you familiar with the character of the contributions—that is who makes the contributions to the Associated Farmers?

A. Others than membership fees. [1199]

Q. Yes. A. Anybody.

Q. Can you answer that yes or no?

A. Yes.

Q. By whom are those contributions made, if you know?

A. We get money from any source from which we can get it as long as there are no strings attached to it.

Q. Are they made by employees—all right, I am leading you.

Mr. Petersen: I was just going to object.

Q. (By Mr. Whitelaw): What class of persons are they made by—in what walk of life?

Mr Petersen: Mr. Examiner, I am going to object to the question because the records of the Association would be the best evidence, if they are going to introduce this kind of testimony.

Trial Examiner Mouritsen: I will overrule the objection.

The Witness: Made by farmers, growers and shippers; flax growers, hay growers, and as I said before, anybody else from whom we can get money—professional and business men. [1200]

(Testimony of G. G. Bennett.)

Redirect Examination

Q. (By Mr. Whitelaw): Mr. Bennett, has the Associated Farmers ever contributed anything to the Holtville Ice and Cold Storage Company employees? A. No. [1209]

Mr. Ryan: I object to that as calling for a conclusion.

Trial Examiner Mouritsen: The answer is in; I will let it stand.

Q. (By Mr. Whitelaw): Have they ever contributed anything to the Holtville Ice and Cold Storage Company? A. No.

Mr. Ryan: I object to that.

Trial Examiner Mouritsen: The answer is in and I will let it stand.

Q. (By Mr. Whitelaw): Mr. Bennett, did you know of your own knowledge that Mr. Tom Herring called Mr.—I will withdraw that and reframe the question.

Did you learn or know that Mr. Tom Herring called Mr. Osborne on the telephone and asked him to come to Holtville?

A. Just by report. Mr. Osborne told me that he had.

Q. Did he also report to you that Mr. Willard had called him on the telephone?

A. No. Mr. Willard at that time—at the time Mr. Osborne told me that Herring had called him, he also told me that Mr. Willard was away.

Q. In other words, if Mr. Willard called him

(Testimony of G. G. Bennett.)

on the telephone it would have to have been subsequent to the time Mr. Herring called him?

A. That is right. [1210]

Recross Examination

Q. (By Mr. Petersen): How did you know Mr. Willard was gone when Mr. Herring called Mr. Osborne?

A. I just testified that at the same time that Mr. Osborne told me that Mr. Herring had called him on the telephone he also told me that Mr. Willard was away.

Q. On vacation or anything—did he say anything except that he was away?

A. Just away. [1211]

Q. About what time of the year was that?

A. Along in the fall some time.

Q. Did Mr. Osborne tell you anything else about his conversation with Mr. Herring?

A. Mr. Osborne said that Mr. Herring wanted to set up a small union of the workers of the Holtville Ice and Cold Storage Company.

HUGH T. OSBORNE,

having been previously duly sworn, was called by and on behalf of the Associated Farmers, and testified as follows:

Trial Examiner Mouritsen: You have already been sworn and you are the same Hugh T. Osborne who was on the stand before?

(Testimony of Hugh T. Osborne.)

The Witness: That is right.

Direct Examination

Q. (By Mr. Whitelaw): Mr. Osborne, you have been attending these meetings here, have you not?

A. Yes.

And you heard Mr. Roy Davis testify from the witness [1212] stand? A. I did.

Q. Now, when Mr. Herring called you to come to Holtville did you go to see Mr. Herring?

A. I did.

Q. Did Mr. Herring at that time tell you to go see Mr. Davis?

A. I don't recall whether it was at that time or some time shortly after that.

Q. In any event, in one of your conversations with Mr. Herring he told you to go see Mr. Davis?

A. He suggested it.

Q. Did you see Mr. Davis? A. I did.

Q. Did you have a conversation with Mr. Davis?

A. I did

Q. Did you in that conversation state to Mr. Davis words, in substance or to the effect, that Mr. Willard would close down his plant if the Teamsters Union got control? A. I did not. [1213]

Q. (By Mr. Petersen): Do you know Mr. Keith Metz? A. Yes.

Q. Did you see him over in Holtville in the month of [1218] September or early October?

Mr. Whitelaw: What year?

Mr. Petersen: 1941.

(Testimony of Hugh T. Osborne.)

The Witness: I don't remember.

Q. (By Mr. Petersen): Did you call on Mr. Keith Metz when you called on Mr. Willard in September? A. I did not.

Q. 1941? A. I did not.

Q. Did you call on him subsequently?

A. No, sir.

Q. Did you meet him any place?

A. I did not.

Q. By chance?

A. I did not—just a moment. When you say “meet him by chance”, I can't recall. I did not discuss this matter with him. [1219]

Mr. Ryan: Mr. Reporter, will you mark for identification as Board's Exhibits next in order these papers?

(The documents referred to were marked as Board's Exhibits 20 to 28, inclusive, for identification.)

Mr. Ryan: I have had marked for identification the two-week period payrolls for the year 1941, beginning with March 15, 1941, and continuing through to July 15, 1941, and have them marked in consecutive order as Board's Exhibit 20 for identification, which is March 15, 1941, payroll, through July 15th payroll, which is Board's Exhibit 28.

I now ask counsel to stipulate that these payrolls were taken from the original payroll records of the company and represent the information contained on those payrolls for the respective periods.

Mr. Smith: So stipulated.

Mr. Whitelaw: That is correct, I so stipulate.

Mr. Ryan: I offer Board's Exhibits 20 through 28 inclusive in evidence.

Trial Examiner Mouritsen: They will be received in evidence as marked.

(Thereupon the documents referred to, heretofore marked for identification, as Board's Exhibits Nos. 20 to 28, inclusive, were received in evidence.) [1223]

BOARD'S EXHIBIT No. 20

February 15, 1943

Payroll for Period Ending March 15, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

E. S. Jones

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Arthur Standifer

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Bailey Pool
R. H. Ireland
Lloyd Gettle
Simon Hogue
Stanley Harlan
Robert C. Hefner
W. T. Morgan
Wm. Hearen
Alfred Brown

Platform & Delivery

Joe Edwards Jr.
W. C. Hefner
Evert Broderick
Tom Herring
G. P. Drinkard
H. C. Fredinburg
Less Cardwell
John F. Thiesen
Frank Van Der Linden

Garage Mechanic

N. Ballard

[In pencil]: 30

BOARD'S EXHIBIT No. 21

February 15, 1943

Payroll for Period Ending April 1, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

E. S. Jones

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Arthur Standifer

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Bailey Pool

R. H. Ireland

Lloyd Gettle

Simon Hogue

Stanley Harlan

R. Chas. Hefner

W. T. Morgan

Wm. Hearen, Jr.

W. C. Hefner

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

John F. Thiesen

Frank Van Der Linden

Garage Mechanic

N. Ballard

[In pencil]: 28

BOARD'S EXHIBIT No. 22

February 15, 1943

Payroll for Period Ending April 15, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

E. S. Jones

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Arthur Standifer

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Bailey Pool
R. H. Ireland
Lloyd Gettle
Simon Hogue
Stanley Harlan
R. C. Hefner
W. T. Morgan
Sanford Sumner
W. C. Hefner

Platform & Delivery

Evert Broderick
Tom Herring
G. P. Drinkard
H. C. Fredinburg
Less Cardwell
John F. Thiesen
Frank Van Der Linden

Garage Mechanic

N. Ballard

[In pencil]: 28

BOARD'S EXHIBIT No. 23

February 15, 1943

Payroll for Period Ending May 1, 1941

Engine Room

H. G. Miller
M. K. Stout
H. T. Pool
E. S. Jones

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Arthur Standifer

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Bailey Pool

R. H. Ireland

Lloyd Gettle

Simon Hogue

Stanley Harlan

R. C. Hefner

W. T. Morgan

W. C. Hefner

Alton Oneal

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

Frank Van Der Linden

Garage Mechanic

N. Ballard

[In pencil]: 27

BOARD'S EXHIBIT No. 24

February 15, 1943

Payroll for Period Ending May 15, 1941

Engine Room

Arthur Standifer

H. G. Miller

M. K. Stout

H. T. Pool

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Storeroom

Bailey Pool

R. H. Ireland

Lloyd Gettle

Simon Hogue

Stanley Harlan

R. C. Hefner

W. T. Morgan

W. C. Hefner

Alton Oneal

Marland Marshall

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

Donald Wooldridge

Garage Mechanic

N. Ballard

[In pencil]: 27

BOARD'S EXHIBIT No. 25

February 15, 1943

Payroll for Period Ending June 1, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

Arthur Standifer

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

Loren Ray Oneal

R. H. Ireland

Bailey Pool

Lloyd Gettle

Simon Hogue

Stanley Harlan

R. C. Hefner

W. T. Morgan

W. C. Hefner

Alton Oneal

Marland Marshall

Ray Adcock

James Anthony

Toab Wolford

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

Donald Wooldridge

Silas Ambrose Johnson

Ed Milner

G. A. Brown

Gilbert Cardwell

Garage Mechanic

Nick Ballard

[In pencil]: 35

BOARD'S EXHIBIT No. 26

February 15, 1943

Payroll for Period Ending June 15, 1941

Engine Room:

H. G. Miller

M. K. Stout

H. T. Pool

Arthur Standifer

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

Herman Fruhn

George R. Harlan

P. T. Blankenship

Dan Oneal

Store Room

R. H. Ireland

Bailey Pool

Lloyd Gettle

Simon Hogue

Stanley Harlan

Charles Hefner

W. T. Morgan

W. C. Hefner

Alton Oneal

Marland Marshall

L. R. Oneal

Roy Adcock

James Anthony

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Less Cardwell

Donald Wooldridge

Jack Johnson

Alfred Brown

Gilbert Cardwell

Garage Mechanic

N. Ballard

[In pencil]: 33

BOARD'S EXHIBIT No. 27**February 15, 1943****Payroll for Period Ending July 1, 1941****Engine Room**

H. G. Miller

M. K. Stout

H. T. Pool

Arthur Standifer

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

P. T. Blankenship

Herman Fruhn

George R. Harlan

Dan Oneal

Store Room

Stanley Harlan
R. H. Ireland
Bailey Pool
Lloyd Gettle
Charles Hefner
Simon Hogue
W. T. Morgan
W. C. Hefner
Marland Marshall
L. R. Oneal
Ray Adcock

Platform & Delivery

Evert Broderick
Tom Herring
G. P. Drinkard
H. C. Fredinburg
Less Cardwell
Donald Wooldridge
Jack Johnson
Alfred Brown

Garage Mechanic

N. Ballard

[In pencil]: 30

BOARD'S EXHIBIT No. 28

February 15, 1943

Payroll for Period Ending July 15, 1941

Engine Room

H. G. Miller

M. K. Stout

H. T. Pool

Arthur Standifer

Engine Maintenance

Marion Wooldridge

L. C. Hart

Can Pullers

P. T. Blankenship

Herman Fruhn

George R. Harlan

Dan Oneal

Storeroom

Stanley Harlan

R. H. Ireland

Bailey Pool

Lloyd Gettle

Charles Hefner

Simon Hogue

W. T. Morgan

L. R. Oneal

Ray Adcock

Platform & Delivery

Evert Broderick

Tom Herring

G. P. Drinkard

H. C. Fredinburg

Jack Johnson

Garage Mechanic

N. Ballard

[In pencil]: 25

Mr. Smith: It is understood, of course, these do not contain the name of superintendents or the head office man.

Mr. Ryan: I understand that.

Will you mark these, Mr. Reporter.

(The documents referred to were marked as Board's Exhibits 29 to 38, inclusive, were marked for identification.)

Mr. Ryan: I have had marked for identification the payrolls beginning March 1st, 1942, through July 15, 1942, each payroll representing a two-week payroll period.

I began with March 1, 1942, which is Board's Exhibit 29 for identification, and running through to July 15, 1942, which is Board's Exhibit 38 for identification.

I now ask counsel to stipulate that Board's Exhibits 29 through Board's Exhibit 38, inclusive, represent the information contained in the original

payroll records of the company for the respective periods and were taken from these records.

Mr. Smith: So stipulated, except you state, Mr. Ryan, that the first one, Board's Exhibit 29, was the payroll period beginning March 1st whereas, the document shows it is the payroll period ending March 1st.

Mr. Ryan: I accept that correction.

Mr. Whitelaw: So stipulated.

Mr. Petersen: I think the record would show they are [1224] not two-week payrolls.

Mr. Ryan: Semi-monthly.

Mr. Petersen: Semi-monthly and not every two weeks.

Mr. Ryan: I offer Board's Exhibits 29 through 38 in evidence.

Trial Examiner Mouritsen: I will receive them in evidence.

(Thereupon the documents referred to, heretofore marked for identification as Board's Exhibits 29 to 38 inclusive, were received in evidence.)

BOARD'S EXHIBIT No. 29

February 15, 1943

Payroll for Period Ending March 1, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland
W. T. Morgan
Oran Stephens
Dan ONeal
Albert Hensley
George Daily
C. D. Allen
Ray Brixey

Platform & Delivery

G. P. Drinkard
Woodrow Faulkner
Charles Hefner
Stanley Harlan
W. C. Hefner
Delber Haul Guy
Tom Herring
Joe Raine
Jack Garber
Sterling Paris

Garage Mechanic

Nick Ballard

Electrician

C. H. Johnston

[In pencil]: 24

BOARD'S EXHIBIT No. 30

February 15, 1943

Payroll for Period Ending March 15, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Oran Stephens

Dan Oneal

Albert Hensley

George Daily

C. D. Allen

Ray Brixey

Silas Ambrose Johnson

Platform & Delivery

G. P. Drinkard

Woodrow Faulkner

Charles Hefner

Stanley Harlan

W. C. Hefner

Nathan Otis Edwards

Tom Herring

Joe Raine

Jack Garber

Sterling Paris

Garage Mechanic

Nick Ballard

[In pencil]: 24

BOARD'S EXHIBIT No. 31

February 15, 1943

Payroll for Period Ending April 1, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Silas Ambrose Johnson

Albert Hensley

Dan Oneal

George Daily

C. D. Allen

Platform & Delivery

G. P. Drinkard

Woodrow Faulkner

Charles Hefner

Oran Stephens

Tom Herring

Stanley Harlan

Jack Garber

Sterling Paris

Garage Mechanic

Nick Ballard

[In Pencil]: 20

BOARD'S EXHIBIT No. 32

February 15, 1943

Payroll for Period Ending April 15, 1942

Tank Room

M. K. Stout
George R. Harlan
Lloyd Gettle
Simon Hogue

Store Room

R. H. Ireland
W. T. Morgan
Silas Ambrose Johnson
Albert Hensley
Dan Oneal
George Daily
C. D. Allan

Platform & Delivery

G. P. Drinkard
Woodrow Faulkner
Charles Hefner
Tom Herring
Stanley Harlan
W. C. Hefner
Jack Garber
Sterling Paris

Garage Mechanic

Nick Ballard

Electrician

C. H. Johnston

[In Pencil]: 21

BOARD'S EXHIBIT No. 33

February 15, 1943

Payroll for Period Ending May 1, 1942

Tank Room

M. K. Stout
George R. Harlan
Lloyd Gettle
Simon Hogue

Storeroom

R. H. Ireland
W. T. Morgan
Stanley Harlan
Silas Ambrose Johnson
Dan Oneal
Menno Simon Nickel
Cleo K. Green
William Starner
C. D. Allan

Platform & Delivery

George Daily
Oliver Morrill
G. P. Drinkard
Woodrow Faulkner
Ted Eugster
Tom Herring
W. C. Hefner
Jack Garber
Sterling Paris

Garage Mechanic

Nick Ballard

Electrician

C. H. Johnston

[In Pencil]: 24

BOARD'S EXHIBIT No. 34

February 15, 1943

Payroll for Period Ending May 15, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Stanley Harlan

Silas Johnson

Dan Oneal

C. D. Allen

Cleo K. Green

William Starner

Platform & Delivery

Pearl Fauver

L

Harry Rinker

G. P. Drinkard

Raymond Bentley

Woodrow Faulkner

James Bedient

John Herron

Charles Hefner

Francies Phillips

Tom Herring

W. C. Hefner

Jake Dungan

Jack Garber

Sterling Paris

Garage Mechanic

Nick Ballard

[In Pencil]: 27

BOARD'S EXHIBIT No. 35

February 15, 1943

Payroll for Period Ending June 1, 1942

Tank Room

M. K. Stout

George R. Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Silas Ambrose Johnson

Stanley Harlan

Dan Oneal

William Starner

C. D. Allen

Joe Sigrist

Manuel Mazon

LeRoy Marlin

Phillip Griffin

Dorsey Williams

Platform & Delivery

G. P. Drinkard

James Bedient

Raymond Bentley

John Herron

Harry Linker

Francies Phillips

Pearl Fauver

Tom Herring

Jake Dungan

W. C. Hefner

Jack Garber

Sterling Paris

Garage Mechanic

Nick Ballard

[In Pencil]: 29

BOARD'S EXHIBIT No. 36**February 15, 1943****Payroll for Period Ending June 15, 1942****Tank Room**

M. K. Stout

George Harlan

Lloyd Gettle

Simon Hogue

Store Room

R. H. Ireland

W. T. Morgan

Silas Johnson

Stanley Harlan

Dan Oneal
Jake Dungan
Manuel Mazon
Le Roy Marlin
Joe Sigrist
V. E. Henson
Dorsey Williams

Platform & Delivery

G. P. Drinkard
James Bedient
John Herron
William Starner
Pearl Fauver
Tom Herring
W. C. Hefner
Jack Garber
Sterling Paris

Garage Mechanic

Nick Ballard

[In Pencil]: 25

BOARD'S EXHIBIT No. 37

February 15, 1943

Payroll for Period Ending July 1, 1942

Tank Room

M. K. Stout
George R. Harlan
Lloyd Gettle
Simon Hogue

Store Room

R. H. Ireland
W. T. Morgan
Stanley Harlan
Silas Johnson
Dan Oneal
William Starner
Le Roy Marlin
V. E. Henson
Jake Dungan
Manual Mazon
Joe Sigrist

Platform & Delivery

G. P. Drinkard
Jim Bedient
Tom Herring
W. C. Hefner
Jack Garber
Sterling Paris
James Green

Garage Mechanic

Nick Ballard

[In Pencil]: 23

BOARD'S EXHIBIT No. 38

February 15, 1943

Payroll for Period Ending July 15, 1942

Tank Room

M. K. Stout
George Harlan
Lloyd Gettle
Simon Hogue

Store Room

R. H. Ireland
W. T. Morgan
Stanley Harlan
Silas Johnson
Dan Oneal
William Starner
V. E. Henson
Le Roy Marlin
Billy Allen Hogue

Platform & Delivery

G. P. Drinkard
Tom Herring
Jack Garber
James Green

Garage Mechanic

Nick Ballard

[In Pencil]: 18

Trial Examiner Mouritsen: You may proceed.
Mr. Smith: Herman Smith.

HERMAN P. SMITH,

resumed the stand for further cross examination.

Trial Examiner Mouritsen: You have already been sworn, Mr. Smith, and you are the same Herman P. Smith who was on the stand earlier in this hearing.

The Witness: That is right. [1225]

(Testimony of Herman P. Smith.)

Mr. Ryan: Mr. Reporter, will you mark this Board's exhibit next in order?

(The document referred to was marked as Board's Exhibit No. 39 for identification.)

Mr. Smith: What is that?

Mr. Ryan: Date of termination of employment by the following men and the reasons therefor, naming E. S. Jones, M. Wooldridge, S. Harlan and E. Broderick.

Q. (By Mr. Ryan): Mr. Smith, I show you what has been marked for identification as Board's Exhibit 39, and ask you whether or not that matter was prepared under your direction and supervision.

A. It was.

Q. And is it a correct statement of the facts which it purports to set forth?

A. As evidenced by our payroll records.

Mr. Ryan: I offer it in evidence as Board's Exhibit 39.

Trial Examiner Mouritsen: Any objection?

Mr. Smith: No objection. [1237]

Mr. Whitelaw: No objection.

Mr. Petersen: May I look at it?

(Document handed to Mr. Petersen.)

Mr. Petersen: I am going to object. There is an omission on the record. It should show by the testimony so far H. G. Miller left voluntarily.

Mr. Smith: I understand the witness was asked to furnish the termination dates of those four names.

Trial Examiner Mouritsen: That is all right,

(Testimony of Herman P. Smith.)

gentlemen; I will overrule the objection. Are there any other objections to the offer?

Mr. Whitelaw: No objection.

Trial Examiner Mouritsen: I will receive it as Board's Exhibit 39 in evidence.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 39, was received in evidence.)

BOARD'S EXHIBIT NO. 39

Holtville Ice And Cold Storage Company
Holtville, California

February 16, 1943

Date of Termination of Employment By The
Following Men And The Reason Therefor:

E. S. JONES

Employment terminated May 1, 1941. Left voluntarily to go into business for himself.

M. WOOLDRIDGE

Employment terminated May 1, 1941. Left voluntarily to go to work in defense work at the coast.

S. HARLAN

Employment terminated July 15, 1942. Laid off because of no work available.

E. BRODERICK

Employment terminated September 1, 1941. Quit to go to work in defense plant in San Diego.

(Testimony of Herman P. Smith.)

Mr. Ryan: No further questions. [1238]

Recross Examination

Q. (By Mr. Whitelaw): I have one question I would like to ask Mr. Smith. Do you recollect Mr. —well, I think his name was Lloyd—do you recollect Mr. Lloyd coming to the office of the Holtville Ice and Cold Storage Company, the representative of the Teamsters Union?

A. Will you repeat the question?

Trial Examiner Mouritsen: Read the question.

(Question read.)

The Witness: Do I recollect if they ever came to the office?

Mr. Whitelaw: Yes. [1248]

The Witness: I have no recollection of a man by that name coming to the office.

Q. (By Mr. Whitelaw): Do you recollect two men representing themselves as Teamsters representatives and asking for an appointment with Mr. Willard?

A. I do.

Q. Do you know what their names were?

A. No, I don't—I don't remember.

Q. And did you make an appointment for any definite time?

A. I did.

Q. And what time of the day or what day was it you made an appointment with them for Mr. Willard? Do you recall that?

A. (No answer.)

Q. Relate the circumstances then of your conversation with them relative to this appointment, if you had such a conversation.

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: Can we fix the time when this occurred?

The Witness: As near as I can recollect it must have been the last half of October, 1941.

Q. (By Mr. Whitelaw): And what was said by you and what was said by either one or both of them?

A. They had been in, I believe it was these two same men, had been in and had left a proposal. I believe that is [1249] what it was called. They left a proposal for Mr. Willard and wanted me to give it to Mr. Willard and they had returned a few days later. I had gotten back from lunch. I usually get back from lunch around 1:30 and they came in and inquired for Mr. Willard, and Mr. Willard wasn't there and I either knew Mr. Willard was going to be back around 3:00 or had reason to believe he would be back around 3:00 o'clock that afternoon, so I told them I felt quite sure that they could see Mr. Willard at that time, and if Mr. Willard came in I would tell him and ask him to wait for them.

They said that they had another, I think, call to make, and that they would come back about 3:00 o'clock.

Q. And did Mr. Willard come in?

A. He did.

Q. And did he come in about 3:00 o'clock?

A. I believe a few minutes before, because I told Mr. Willard that they were coming back at 3:00 o'clock, so he waited.

Q. How long did he wait?

A. Oh, if I remember correctly he waited pos-

(Testimony of Herman P. Smith.)

sibly until 3:30 or a quarter to 4:00. That is usually the time Mr. Willard leaves the office in the afternoon—that is, quite frequently he does.

Q. And did you remain there all afternoon yourself? [1250]

A. Yes, I was—it was the time of the year when I wasn't taken very much away from the office. I am around the office quite regularly.

Q. What time did you leave that date, if you can remember, approximately?

A. Well, I usually leave just shortly before 5:30. I take the mail up to the post office——

Q. And had they appeared at that time?

A. They had not.

Mr. Whitelaw: That is all.

Redirect Examination

Q. (By Mr. Smith): Did they ever come back again that you saw?

A. Yes; they came back and met with Mr. Willard, because I sat in on the meeting. I remember it.

Q. Then after they met with Mr. Willard that time—do you know about what time that was?

A. (No answer.)

Trial Examiner Mouritsen: Maybe you could tell us—about how long after the first time they came there was it that they came again and met Mr. Willard?

The Witness: From the time—the first time that they contacted me when they left the proposal, I would say it was probably a three-week period elapsed, as nearly as I can recollect now. [1251]

(Testimony of Herman P. Smith.)

Mr. Petersen: Can you fix the date in relation to the date of the starting of operations of the plant that year? Was the plant in operation?

The Witness: No, I don't believe it was.

Trial Examiner Mouritsen: I think the date indicated so far, that the proposal was left, was about October 12th, and I think the later conference with Mr. Willard has been fixed at either the 26th or 28th of October, 1941. Would you disagree with that, Mr. Witness? Would you say it was a two-weeks period or a three-weeks period? In other words, what I am trying to get at is, you say about three weeks and it has been fixed so far as about two weeks. Would you say that that was incorrect?

The Witness: No, I wouldn't say it was incorrect—I don't recollect.

Q. (By Mr. Smith): Mr. Smith, to your knowledge, did they ever talk to Mr. Willard more than one time?

A. No; just the one time that I knew anything about.

Q. And had he read their proposal at that time?

A. He had not.

Q. What did he tell them?

Mr. Petersen: To which we are going to object as calling for a conclusion of the witness.

Mr. Smith: He was present.

Trial Examiner Mouritsen: Were you there when they [1252] talked with Mr. Willard?

The Witness: Yes.

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: Answer the question.

The Witness: What was the question?

Q. (By Mr. Smith): What did Mr. Willard tell them?

A. He told them he would read the proposal and I believe he told them that he wanted to take it up with his directors before he took any action on it. It was a very short meeting. That was the sum and substance of it.

Trial Examiner Mouritsen: You base your statement that he had not read the contract upon the fact he told them he had not read the contract?

The Witness: That is right.

Q. (By Mr. Smith): Then to your knowledge, Mr. Smith, did they ever talk with Mr. Willard again? A. They did not.

Q. And was any communication ever received from the American Federation of Labor until that letter which is dated January 12, 1942?

A. There was not. [1253]

Mr. Ryan: Will you mark this?

(Thereupon the document referred to was marked as Board's Exhibit No. 40, for identification.)

Q. (By Mr. Ryan): Mr. Smith, I show you what has been marked for identification Board's Exhibit 40 and ask you what it is? (Handing exhibit to the witness)

A. History of each of the following named persons, showing the following information: When first employed, layoffs. [1269]

(Testimony of Herman P. Smith.)

Trial Examiner Mouritsen: Doesn't that speak for itself?

The Witness: Yes.

Q. (By Mr. Ryan): Was that prepared under your direction and supervision? A. It was.

Q. From the records of the company?

A. It was.

Mr. Ryan: I offer it in evidence and will show it to counsel.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Whitelaw: None on our part.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: I will receive it as Board's Exhibit 40.

(Thereupon the document heretofore marked as Board's Exhibit No. 40 for identification, was received in evidence.) [1270]

BOARD'S EXHIBIT NO. 40

Holtville Ice And Cold Storage Co.

Holtville, California

February 16, 1943.

Employment History of Each of Following Named Persons, Showing Following Information:

A. When First Employed.

B. Layoffs or Discharges of Each Man by Company and Reason Therefor.

(Testimony of Herman P. Smith.)

M. K. Stout

First employed first half of June, 1933; laid off on account of no work from end of July to first of November, 1933.

George Harlan

First employed last half of April, 1938. Layoffs were as follows: July 15th to November 1, 1938, reason—no work for this man. Layoff July 1st to September 1, 1939, on account of no work for this man.

S. Hogue

First employed Feb. 1, 1940. Layoffs as follows: From Sept. 15, 1940 to Oct. 15, 1940 on account of there being no work for this man. Laid off from August 15, 1941 to October 25, 1941. No work for this man.

L. Gettle.

First employed Jan. 1, 1940. Layoffs were as follows: From August 1, 1940 to October 15, 1940 on account of there being no work for this man. August 1, 1941 to October 25, 1941 because of no work for this man.

R. Ireland

First employed first half of October, 1939. Layoffs were as follows: From September 15th to October 15, 1940 because of no work for this man, and from August 15, 1941 to October 25, 1941 because of no work for this man.

(Testimony of Herman P. Smith.)

W. T. Morgan

First employed January 15, 1941. Layoffs were as follows: From August 15, 1941 to November 1, 1941, on account of there being no work for this man.

S. Harlan

First employed first half of June, 1939. Layoffs are as follows: Last half of July, 1939 to January 25, 1940 on account of there being no work for this man. From June 15, 1940 to January 1, 1941 on account of there being no work for this man. From August 1, 1941 to January 10, 1942 because there was no work for him. Laid off June 15, 1942 because there was no work for him, and he has not been back to work since.

Tom Herring.

First employed last half of August, 1931. Was laid off from the first of June, 1932 to last part of October, 1932 because there was no work available. He has worked continuously since.

G. P. Drinkard

First employed first half of April, 1930. Layoffs were as follows: From November 1, 1938 to December 25, 1938 because there was no work for this man. He has worked continuously since.

F. A. WILLARD,

recalled as a witness by and on behalf of the respondent, Holtville Ice and Cold Storage Company, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Smith): You are the same F. A. Willard who was previously sworn and testified?

A. Yes, sir. [1271]

Q. Did you know or have any knowledge that any of the seven men who are named in the complaint, and who were laid off—were not reemployed, had made application to the union?

A. No, sir, I did not.

Q. Now, regarding your work at the plant in the last three or four years, has your own personal supervision at the ice plant changed any in that time?

A. Very much, yes.

Q. What has been the change?

A. Well, particularly for the last three years I have been forced to put in less time at the plant and I have encouraged each foreman and superintendent to take on more responsibility for the purpose of letting me be away more.

Q. And have you employed anyone yourself?

A. No, sir.

Q. In the last few years?

A. No, sir.

Q. Or discharged anyone?

A. No, sir.

Q. And have you spent a great deal of time away from the office or the plant in the last three or four years?

A. I have, yes.

(Testimony of F. A. Willard.)

Q. Now, has there ever been a custom at the ice plant regarding these—regarding who should get a vacation with [1276] pay?

A. Yes, there has.

Q. What has been that custom or practice?

A. When we started giving vacations with pay, we figured that anyone who worked through the vegetable season was entitled to and would get a week's vacation with pay. Later that was increased to permit them to have a week with pay and a week without pay.

Q. Well, was there ever a custom to give a week with pay and a week without pay, or did some take a week without pay and some take more?

Mr. Ryan: I object to the question as leading.

Trial Examiner Mouritsen: I will sustain the objection.

Q. (By Mr. Smith): What was the practice about those that took a week with pay and an additional week without pay? Was there any uniformity of any class of employees that only took a week without pay? A. Yes.

Mr. Ryan: I object to leading the witness in this fashion.

Trial Examiner Mouritsen: Yes.

Mr. Ryan: As to what the custom was, if there was one.

Q. (By Mr. Smith): What was the custom regarding that subject?

A. Well, there were at the time of these vacations, there [1277] were really two classes of em-

(Testimony of F. A. Willard.)

ployees: those whom we had work for the summer or the idle season. They got a week with pay and a week without pay.

The rest of the employees, they could have the rest of the summer if they wanted it.

Trial Examiner Mouritsen: You gave them a week with pay?

The Witness: Yes.

Mr. Ryan: Wait a minute, wait a minute. He did not say that, Mr. Examiner. He did not say he gave the rest of them a week with pay.

Mr. Smith: Did you?

The Witness: Yes; every one that worked throughout the vegetable season had a week with pay.

Mr. Ryan: Through the entire part of the—from the very beginning to the very end of it?

The Witness: Well, to tell the truth, we were not absolutely strict on that. If any of the foremen or superintendents turned in the names of the men who were entitled to a vacation it was never questioned, but the general practice was anyone who worked through the entire vegetable season was entitled to vacation with pay.

Q. (By Mr. Smith): Mr. Willard, I show you A. F. of L. Exhibit 2, and ask you to look it over (handing exhibit to the witness). Now, Mr. Willard, do you know whether or not [1278] the Employees Association ever presented that document or one just like it to you? A. Yes, they did.

(Testimony of F. A. Willard.)

Q. I will show you now Respondent's Exhibit 7, and I see that contains paragraphs 16, 17, 18 and 19, which are not contained in that A. F. of L. Exhibit 2.

I will ask you if they ever presented any document to you that did not contain paragraphs 16—

Trial Examiner Mouritsen: Do you mean the paragraph 16 contained in Respondent's Exhibit 7?

Mr. Smith: Yes.

The Witness: This one doesn't have paragraph 16.

Q. (By Mr. Smith): Did they ever present a document to you that did not contain that paragraph? A. Yes, they did.

Q. Well, do you know how it was—who added that?

A. That was added by the Association.

Q. And then that Exhibit 2 was somewhere along the line before you reached a final contract, was it?

A. Yes.

Q. And did you ever make any suggestions for the addition of paragraph 16? A. No.

Q. Did you raise any objection to it when it was presented to you? [1279] A. I did.

Q. Do you recall any discussion that you had with anyone, either the bargaining committee or the membership, that called on you, regarding that clause? A. Yes.

Trial Examiner Mouritsen: Let me find out about the time and who said what. [1280]

The Witness: Well, this paragraph was dis-

(Testimony of F. A. Willard.)

cussed in a bargaining committee meeting and I objected to it. The treasurer, Mr. Stout, was about the only one, as I recollect, who insisted on having it, and the final outcome was that I agreed to it.

Q. (By Mr. Smith): Now, do you definitely remember, Mr. Willard, whether or not they ever did present to you that contract that is marked A. F. of L. Exhibit 2, which did not contain that paragraph 16? A. Yes.

Mr. Petersen: To which I am going to object. The question has already been asked and answered.

Trial Examiner Mouritsen: He answered it the second time. I will leave the answer in.

Mr. Smith: I guess that is all. [1281]

HUGH T. OSBORNE

recalled as a witness by and on behalf of the Associated Farmers, having been previously duly sworn, was examined and testified further as follows:

Trial Examiner Mouritsen: You are the same Hugh T. Osborne who has heretofore been sworn and testified in this hearing?

The Witness: Yes.

Direct Examination [1295]

Q. (By Mr. Whitelaw): Now, Mr. Osborne, you heard the testimony here of Herman Pool, did you not? A. I did.

Q. He testified in substance that you met him

(Testimony of Hugh T. Osborne.)

once at his house out in the country about dark, some time in 1940, and you stated as follows:

“I am not going to let you bring the union to the Valley.”

Did you state that in substance or any other phraseology from which that could be drawn by Mr. Pool? A. No, I did not.

Mr. Whitelaw: That is all. [1296]

Mr. Ryan: No questions.

Trial Examiner Mouritsen: What did you say to Mr. Pool on that occasion?

The Witness: I was directed to Mr. Pool by Mr. Harlan and Mr. Herring, to discuss——

Trial Examiner Mouritsen: I am just asking what you said to him.

The Witness: I told him if he was interested in the independent association I would be pleased to give him any information that I had regarding the matter.

Q. (By Mr. Whitelaw): What did he say in response to that?

A. That he had already made application for membership in the A. F. of L. Union.

Trial Examiner Mouritsen: Did you say anything further?

The Witness: I don't recall what was said further. [1297]

PETE POOL,

recalled as a witness by and on behalf of the Respondent Ice Company, having been previously duly sworn, was examined and testified as follows:

Trial Examiner Mouritsen: You are the same Pete Pool who was sworn and testified this morning? [1304]

The Witness: Yes, sir.

Direct Examination

Q. (By Mr. Smith): Pete, apparently the last payroll that your brother, Bailey Pool, appears to have received from the Holtville Ice Company, was for the payroll period made on the 15th of July, 1941, at which time he had seven days coming to him.

Now, can you tell us what happened that he didn't continue service with the company between July 15th and July 30th?

A. Well, to the best of my recollection he went off the 5th one day and he didn't come back the next morning and I found out he had got in jail.

Q. How long did he stay in jail, if you know?

A. Four or five days, to the best I remember.

Q. Then did he ever ask to come back to the Holtville Ice Company after that?

A. No, sir.

Q. Did you ever ask him to come back after that?

A. No, sir.

Q. What was he doing?

A. Well, he wasn't doing anything.

(Testimony of Pete Pool.)

Q. Was he talking about going away?

A. Yes.

Q. What was he talking about? [1305]

A. Well, he talked——

Q. What were his plans?

A. He was planning to go home.

Q. Where is his home? A. In Texas.

Q. Well, do you know whether or not the law authorities at Holtville gave him any orders to get out of town?

A. Yes, that is true that was later, though.

Q. Was that when he actually left town?

A. Yes.

Q. Did he get in trouble again when they gave him that order? A. Yes, sir.

Q. What was that trouble?

A. Same trouble, drunk driving, I think it was.

Q. How many brushes with the law did he have under the same charge?

A. Well, I couldn't say to be exact. He had several runins with the law. [1306]

Trial Examiner Mouritsen: Did you ever say anything to him or did he every say anything to you about why he was leaving town?

Mr. Petersen: What was said, where was it, and what time.

Trial Examiner Mouritsen: All right, Mr. Petersen, we can only answer one question at a time. [1307]

The Witness: Well, he stayed in jail, I think, about two days this time—the last time he got in

(Testimony of Pete Pool.)

jail, and the judge—I think he was tried in Holtville before the judge, and the judge gave him his preference of either leaving town for two years or serving six months, and if I remember right he told me that he gave him 24 hours to study it over.

He came to me and asked me what I thought about it, and I told him the best thing, I thought he could do, was leave the country and join the Army and try to clear up his record.

Mr. Ryan: When was that, Mr. Pool?

The Witness: That was in 1940, some time in October.

Mr. Ryan: You mean 1941?

The Witness: Yes, somewhere along the last part of October.

Q. (By Mr. Smith): Well, that is the story of Bailey Pool, is it? A. Yes, it is. [1308]

[Endorsed]: No. 10695. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne, Respondents. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed March 2, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 10695

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**HOLTVILLE ICE AND COLD STORAGE COMPANY, ASSOCIATED
FARMERS OF IMPERIAL COUNTY, AND HUGH T. OS-
BORNE, RESPONDENTS**

**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

	Page
Jurisdiction.....	1
Statement of the case.....	2
Summary of Argument.....	4
Argument.....	4
I. The Act is applicable to the operations of the Ice Company.....	4
II. The Board's findings of fact are supported by substantial evidence. Upon these facts respondents have engaged in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act and the Ice Company has also engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.....	6
A. The violations of Section 8 (1) and (2) of the Act.....	6
B. The violations of Section 8 (3) and (1) of the Act.....	17
Recapitulation.....	31
III. The Board's order is valid.....	31
Conclusion.....	33
Appendix.....	34

AUTHORITIES CITED

Cases:

<i>Clover Fork Coal Co. v. National Labor Relations Board</i> , 97 F. (2d) 331 (C. C. A. 6).....	29
<i>Consolidated Edison Co. v. National Labor Relations Board</i> , 305 U. S. 197.....	6
<i>Elastic Stop Nut Corp. v. National Labor Relations Board</i> , decided May 1, 1944 (C. C. A. 8).....	15
<i>Heinz Co., H. J. v. National Labor Relations Board</i> , 311 U. S. 514....	16
<i>International Ass'n of Machinists v. National Labor Relations Board</i> , 311 U. S. 72.....	16
<i>National Labor Relations Board v. American Potash and Chemical Corp.</i> , 98 F. (2d) 488 (C. C. A. 9), cert. denied 306 U. S. 643.....	29
<i>National Labor Relations Board v. Baltimore Transit Co.</i> , 140 F. (2d) 51 (C. C. A. 4), cert. denied 64 S. Ct. 848.....	6
<i>National Labor Relations Board v. Bank of America Assn.</i> , 130 F. (2d) 624 (C. C. A. 9), cert. denied 318 U. S. 791.....	6
<i>National Labor Relations Board v. J. G. Boswell Co.</i> , 136 F. (2d) 585 (C. C. A. 9).....	16, 17

Cases—Continued.

	Page
<i>National Labor Relations Board v. Bradford Dyeing Assn.</i> , 310 U. S. 318-----	6
<i>National Labor Relations Board v. Brown Paper Mill Co.</i> , 108 F. (2d) 867 (C. C. A. 5), cert. denied 310 U. S. 651-----	16
<i>National Labor Relations Board v. Cleveland-Cliffs Iron Co.</i> , 133 F. (2d) 295 (C. C. A. 6)-----	6
<i>National Labor Relations Board v. Express Publishing</i> , 312 U. S. 426-----	33
<i>National Labor Relations Board v. Fansteel Metallurgical Corp.</i> , 306 U. S. 240-----	16
<i>National Labor Relations Board v. Falk Corp.</i> , 308 U. S. 453-----	16
<i>National Labor Relations Board v. Germain Seed & Plant Co.</i> , 134 F. (2d) 94 (C. C. A. 9)-----	16
<i>National Labor Relations Board v. Grower-Shipper Vegetable Assn.</i> , 122 F. (2d) 368 (C. C. A. 9)-----	15
<i>National Labor Relations Board v. Jones & Laughlin Steel Corp.</i> , 301 U. S. 1-----	6
<i>National Labor Relations Board v. Henry Levaux, Inc.</i> , 115 F. (2d) 105 (C. C. A. 1), cert. denied 312 U. S. 682-----	6
<i>National Labor Relations Board v. Long Lake Lumber Co.</i> , 138 F. (2d) 363 (C. C. A. 9)-----	15
<i>National Labor Relations Board v. Mackay Radio & Telegraph Co.</i> , 304 U. S. 333-----	33
<i>National Labor Relations Board v. Moltrup Steel Products Co.</i> , 121 F. (2d) 612 (C. C. A. 3)-----	16
<i>National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.</i> , 303 U. S. 261-----	15, 16
<i>National Labor Relations Board v. Polson Logging Co.</i> , 136 F. (2d) 314 (C. C. A. 9)-----	17
<i>National Labor Relations Board v. Rock Hill Printing and Finishing Co.</i> , 131 F. (2d) 171 (C. C. A. 4)-----	16
<i>National Labor Relations Board v. Star Publishing Co.</i> , 97 F. (2d) 465 (C. C. A. 9)-----	29
<i>National Labor Relations Board v. Sunshine Mining Co.</i> , 110 F. (2d) 780 (C. C. A. 9), cert. denied 312 U. S. 678-----	6
<i>National Labor Relations Board v. Taylor-Colquitt Co.</i> , 140 F. (2d) 92 (C. C. A. 4)-----	15
<i>National Labor Relations Board v. Wm. Tehel Bottling Co.</i> , 129 F. (2d) 250 (C. C. A. 8)-----	16
<i>North Whittier Heights Citrus Ass'n v. National Labor Relations Board</i> , 109 F. (2d) 76 (C. C. A. 9), cert. denied 310 U. S. 632-----	6
<i>Santa Cruz Fruit Packing Co. v. National Labor Relations Board</i> , 303 U. S. 453-----	6
<i>Wickard v. Filburn</i> , 317 U. S. 111-----	6

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10695

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HOLTVILLE ICE AND COLD STORAGE COMPANY, ASSOCIATED
FARMERS OF IMPERIAL COUNTY, AND HUGH T. OS-
BORNE, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board for enforcement of its order issued against respondents pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, U. S. C. 1940 ed., Title 29, Sec. 151, *et seq.*). This Court has jurisdiction of the proceeding under Section 10 (e) of the Act, since the unfair labor practices occurred, and respondents transact business, within this judicial circuit.¹

¹ The pertinent provisions of the Act are set forth in the Appendix, *infra*, pp. 34-35.

STATEMENT OF THE CASE

Upon charges and amended charges filed by Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. L., herein called the Union, and following the usual proceedings pursuant to Section 10 of the Act, which are fully set forth in the Board's decision (R. 47-50, 91-92), the Board, on July 22, 1943, issued its decision and order (R. 91-99, 46-90; 51 N. L. R. B. 596), which may briefly be summarized as follows:

1. *Identity and nature of business of respondents* (R. 50-53).—Respondent Holtville Ice and Cold Storage Company (hereinafter called the Ice Company) is a California corporation having its principal office and place of business in Holtville, Imperial Valley, California. It is engaged in the manufacture, sale, and distribution of ice, and also rents packing sheds to vegetable packers to whom it sells ice. Respondent Associated Farmers of Imperial County (hereinafter called the Associated Farmers) is a California non-profit corporation composed of farmers, business and professional people of Imperial Valley, including the Ice Company. It was organized in 1936, at the time of "a series of disturbances * * * caused * * * by radical and/or communistic agitators" designed to create "so-called labor trouble among (*sic*) the workers," and its avowed purposes are, *inter alia*, "to protect, preserve and maintain American Institutions and ideals; * * * and to promote and protect the economic (*sic*) and agricultural welfare of the citizens of

the United States and particularly of the Citizens of California.”² It has been instrumental in establishing a number of unaffiliated labor organizations among the employees of various business concerns in Imperial Valley. Respondent Hugh T. Osborne is, and has been since 1937, its secretary-manager.

2. *The unfair labor practices* (R. 53-80).—The Ice Company, and the Associated Farmers and Osborne, acting in its interest, questioned the employees of the Ice Company with respect to their union membership, discouraged adherence to the Union, and dominated, interfered with, and supported an unaffiliated labor organization styled the Holtville Ice and Cold Storage Company Employees Association (hereinafter called the Association). Respondents thereby committed unfair labor practices within the meaning of Section 8 (1) and (2) of the Act. The Ice Company also discriminated with respect to the hire and tenure of employment of 7 employees, in each instance because they applied for membership in the Union. The Ice Company thereby committed further unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act.

3. *The Board's order* (R. 92-96).—The Board ordered the Ice Company to cease and desist from its unfair labor practices, to withdraw recognition from and completely disestablish the Association as the representative of any of its employees, to cease giving

² The quotations are from the articles of incorporation of the organization and the annexed certificate of its secretary (Ass. Farmer's Exh. 1; R. 822, 825).

effect to any contracts with it, to offer reinstatement with back pay to the 7 employees against whom it had discriminated, and to post notices in its plant of compliance with the Board's order. The Board ordered the Associated Farmers and Osborne, when acting in the interest of the Ice Company or in the interest of any other employers, to cease and desist from their unfair labor practices, to refrain from soliciting and collecting funds from the Ice Company or from any other employer for use in interfering with the rights of employees guaranteed in Section 7 of the Act, and to mail to all members and contributors of the Associated Farmers notices of compliance with the provisions of the Board's order as to them.

SUMMARY OF ARGUMENT

I. The Act is applicable to the operations of the Ice Company.

II. The Board's findings of fact are supported by substantial evidence. Upon these facts respondents have engaged in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act and the Ice Company has also engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

III. The Board's order is valid.

ARGUMENT

POINT I

The Act is applicable to the operations of the Ice Company

The Ice Company is engaged in the manufacture, sale, and distribution of ice (R. 137), of which it

produces about 45,000 tons annually (R. 450). Substantially all of this ice is sold to vegetable packers of Imperial Valley, California, under contractual arrangements whereby the Ice Company supplies the packers with packing sheds and railroad sidings which it owns, and the packers in turn purchase from the Ice Company all of their ice requirements (R. 142-144, 161-163).³ The packers use the ice to pack their vegetables in crates and to refrigerate railroad cars in which the vegetables are shipped (R. 145-147). During each of the years 1941 and 1942, the packers thus refrigerated approximately 2,800 railroad cars, over 75 percent of which were used to carry the packers' produce to points outside the State of California (*ibid.*).

Upon the foregoing facts, we submit, the applicability of the Act to the Ice Company's operations is clear under well settled principles. It is plain that a stoppage of the Ice Company's operations by industrial strife would substantially interfere with or interrupt the interstate movement of the large quantities of produce of the vegetable packers who use the Ice Company's ice and packing sheds in connection with their shipments. Accordingly, such stoppage would affect commerce within the meaning of the Act, and the test of the Board's jurisdiction, announced in

³ During 1941 and 1942, the Ice Company's yearly sales of ice were \$111,387 and \$139,339, respectively, of which the sales to the packers totalled \$110,460 and \$138,342 (Bd. Exhs. 2A, 2B, 3A, 3B; R. 139-143). The remaining ice was sold to domestic users (R. 450-451).

N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U. S. 1, 41, 42, 43, is fully met. See, also, *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 220-221; *N. L. R. B. v. Bank of America National Trust & Savings Association*, 130 F. (2d) 624, 626 (C. C. A. 9), cert. denied 318 U. S. 791, 792. Cf. *Wickard v. Filburn*, 317 U. S. 111, 125. It is immaterial that the Ice Company's sales are completed within the State of California,⁴ or that other sources may be available to supply the packers' needs if the Ice Company's operations are interrupted.⁵

POINT II

The Board's findings of fact are supported by substantial evidence. Upon these facts respondents have engaged in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act and the Ice Company has also engaged in unfair labor practices within the meaning of Section 8 (3) of the Act

A. The violations of Section 8 (1) and (2) of the Act

On the evening of September 26, 1941, 11 of the Ice Company's employees visited the offices of the Union in El Centro, California, and signed applications for

⁴ *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 784 (C. C. A. 9); *N. L. R. B. v. Cleveland Cliffs Iron Co.*, 133 F. (2d) 295, 299-300 (C. C. A. 6); *N. L. R. B. v. Henry Levaux, Inc.*, 115 F. (2d) 105, 108-109 (C. C. A. 1). See, also, *Santa Cruz Fruit Packing Co. v. N. L. R. B.*, 303 U. S. 453, 463; *N. L. R. B. v. Baltimore Transit Co.*, 140 F. (2d) 51 (C. C. A. 4), cert. denied 64 S. Ct. 848.

⁵ *N. L. R. B. v. Bradford Dyeing Association*, 310 U. S. 318, 326; the *Bank of America* case, *supra*; *North Whittier Heights Citrus Association v. N. L. R. B.*, 109 F. (2d) 76, 82 (C. C. A. 9), cert. denied 310 U. S. 632.

membership (R. 239-244, 284-289, 402-405).⁶ The following morning, Office Manager Herman Smith⁷ of the Ice Company called employee L. H. Davis to his office and asked him what he knew about the men's joining the Union (R. 424). Davis answered that he knew of the meeting the night before, to which he had been invited, that he had not attended because of a previous engagement, that he had heard that some of the men had joined the Union, and that he did not know how many or who they were (*ibid.*).⁸ The same day or a few days later, Plant Superintendent Pete Pool (R. 172, 566) also questioned a number of employees, including his brother, Herman, Perry Blank-

⁶ The Ice Company manufactures ice only between November 1 and the following July (R. 155-157). During the 1940-41 manufacturing season, its staff increased with its volume of business from 20 on November 1 to 35 in the middle of May, and then receded to 25 at the end of the season in July (Bd. Exhs. 10, 25, 28; R. 600-601, 839-840, 844-845). During the slack period, the Ice Company customarily retained as many men as possible for maintenance work about the plant in order to keep a crew together for the resumption of operations in the fall (R. 451, 523). All of the men who had worked throughout the previous season were regarded by the Ice Company as "normal, regular employees," however, whether or not they were actually retained during the slack period (R. 520, 600-601; Bd. Exh. 10), and it was the practice to recall them when the season started, if their work was satisfactory (R. 399, 452-453). Ten of the 11 men who joined the Union, as stated in the text, were then working at the plant on "made" work, principally for contractors who were then installing electric motors to replace 6 Diesel engines (R. 156, 164-165, 190-191, 523-526; Company Exh. 6; R. 635).

⁷ Smith is also secretary-treasurer of the Ice Company (R. 137, 615).

⁸ Davis applied for membership in the Union on October 3 (R. 286, 421-422).

enship, Henry Fredenburg, and Lester O. Hart, as to their union membership (R. 612-613, 274-275, 374-375, 572, 409). Herman Pool, Blankenship, Fredenburg, and Hart were among the 11 who had joined the Union on September 26 (R. 284-289, 402-405). During these conversations Pool told Hart that President Willard of the Ice Company (R. 137, 147) was "sure mad" because the men had joined the Union (R. 409, 578), he warned Blankenship that the Union "didn't have a chance" because the men who did the hiring were "a jump ahead of the unions" (R. 374-375, 572), and he admonished Herman Pool that he did not think the latter's joining the Union was "a very good idea" and that Willard could get "plenty of nonunion men" to operate the plant (R. 244-246). At least Herman Pool, Blankenship, and Fredenburg admitted that they had joined the Union (R. 612-613, 248, 274, 373-374, 572).

Following his conversations with the men, Superintendent Pool reported to President Willard that the plant had "gone union" (R. 534, 558, 614). Willard thereupon notified Secretary-Manager Osborne of the Associated Farmers by telephone that there were "some union activities around the plant," and asked him if he knew of them and what Willard should do about it (R. 168-169, 197, 478-479, 514, 534). Osborne's official duties required him, *inter alia*, to keep the members of the Associated Farmers "advised" with respect to "organizational efforts occurring among employees" (R. 214), and he assured Willard that he knew "all about" the union movement. He ad-

vised Willard to do nothing, and promised to see him shortly (R. 168-169, 197, 478-479, 514, 534).

Osborne visited Willard a few days later (R. 169-170). Willard again told Osborne of the "disturbance in his working force," referring to the union activities, and asked what Willard's "position" was and what the latter "could do about it" (R. 220, 170, 198, 535). Osborne replied in substance that the American Federation of Labor had been making "special" efforts for some time to organize the employees of ice companies in Imperial Valley, that there was nothing Willard could do without violating the National Labor Relations Act, but that the Associated Farmers was "working on the general situation [to] see it didn't get out of hand" (R. 170, 198, 220, 535).⁹ He also discussed with Willard the formation of an unaffiliated union and told Willard in effect that another local concern had had similar labor "difficulties," which had been resolved by the employees organizing "their own union" (R. 198-199). Willard requested Osborne to "interest" himself in the Ice Company's "situation," and Osborne promised to make an "investigation" (R. 221-222). Shortly thereafter, Willard also conferred with R. B. Whitelaw, attorney for the Associated Farmers, concerning the "disturbance" at the plant (R. 546-548).

Within a few days after his talk with Willard, Osborne "contacted" several of the Ice Company's em-

⁹ It was admittedly the policy and practice of the Associated Farmers to support and organize unaffiliated employee organizations as opposed to affiliated unions (R. 210-213).

ployees, including some who had joined the Union, questioned them as to their reasons for joining, suggested to some of them that they form an unaffiliated organization, and told them to see Whitelaw for legal advice and assistance (R. 223-224, 231-232, 291-293, 329-332, 425-428, 713). In his conversation with Herman Pool, Osborne warned that he was not "going to let you bring the Union into the Valley", presented arguments against union membership, and advised Pool, "If you are not too far in, think it over and back out" (R. 249-251). To Davis, who opposed Osborne's suggestion that the men form an unaffiliated organization, on the ground that such a union would be ineffective, Osborne declared that the Associated Farmers opposed organized labor because it "meant" a closed shop, which was un-American, and stated that Willard would close the Ice Company's plant rather than deal with the Union (R. 428).¹⁰ During his talks with Herring and Harlan, who indicated that they opposed the Union and preferred an unaffiliated organization,¹¹ Osborne promised to help a movement to form such an association and agreed to supply Harlan with a copy of the governing rules of an "inside" union (R. 226, 292-293, 331, 693-694). At Osborne's suggestion, as the Board found (R. 59), Director Metz of the Association Farmers likewise sought out

¹⁰ Osborne prefaced the latter threat with the statement that Willard had not talked to him about "this case, * * * personally" (R. 428).

¹¹ Herring was one of the 12 who had joined the Union (R. 403-405; 685); Harlan had not (R. 292).

an employee, Henry G. Miller, to whom he stated that it would not "pay" him to join the Union, that it would impair Miller's credit as a landowner, and that Willard would welcome, and the Associated Farmers would assist, the employees' formation of a union of "their own" (R. 360-362).¹² He urged Miller to speak to Osborne concerning the matter (R. 362).¹³ Following his "investigation," Osborne made a report to Willard and assured him that the employees were "still loyal" to him (R. 227-228).

Following Osborne's conversations with the employees, several of them, including Harlan, Herring, and M. K. Stout, called upon the Associated Farmers' attorney, Whitelaw, for legal advice and assistance in forming an unaffiliated organization (R. 713-714, 779-780, 812-815). Whitelaw discussed the matter with them and supplied them with a copy of the constitution of such an association at another local plant (*ibid.*).¹⁴ Whitelaw's secretary then prepared a constitution for the Association, which was in the exact verbiage of the model (R. 812-815, cf., Emp. Assn.

¹² Miller had, in fact, already joined the Union (R. 288).

¹³ There was no direct evidence that Metz acted at Osborne's suggestion but the Board's inference that Metz talked to Miller at Osborne's behest was entirely reasonable, we submit, in view of the nature of Metz's remarks to Miller and Osborne's concurrent activities.

¹⁴ This organization was the Cramer Baking Company Employees Association (Emp. Assn. Exh. 3; R. 762-765), to which Osborne apparently had referred in his conversation with Whitelaw when discussing the solution for "labor difficulties" which had been employed by another local concern (*supra*, p. 9).

Exhs. 2 and 3; R. 762-765, 791-794).¹⁵ Subsequently, a group of employees, including the same three who had called on Whitelaw and also several other employees, held a meeting at Harlan's home (R. 229-232, 297-299, 332-333, 698-700, 724-726, 745, 775-776). Osborne attended this meeting and instructed the men concerning the procedure for completing the organization of the Association and the conduct of its business (*ibid.*).

Meanwhile, on October 12, the Union's representatives called at the Ice Company's plant and, in the absence of President Willard, left a proposed form of contract with Office Manager Smith (R. 351-355, 860-864). On October 28, the Union's representatives again called at the plant, and saw Willard. They advised him that the Union was the designated bargaining representative of the majority of the employees, and asked him to negotiate with them on the basis of the previously submitted proposed contract (*ibid.*). Willard replied that he had not read the proposed agreement and that he could not act upon it until he had consulted the Ice Company's board of directors (R. 351-355, 506-508, 561-562, 860-864).

On October 29, the Ice Company resumed its regular operations after the summer slack season.¹⁶ The following day, the Association was formally organized at a meeting held in Stout's home (R. 746-750). Only Harlan, Herring, Stout, Drinkard, and two other employees attended, and this small group elected Har-

¹⁵ Whitelaw's secretary inadvertently omitted one line from the copy (R. 812-815).

¹⁶ See note 6, p. 7, *supra*.

lan president, Herring vice president, and Stout secretary-treasurer (*ibid.*). The three named officers, Drinkard, and one other employee were designated to serve as a bargaining committee (*ibid.*). A proposed new wage scale and other objectives were discussed, and the bargaining committee was instructed to negotiate with the Ice Company (*ibid.*).

Shortly thereafter, the committee called on Willard for bargaining purposes (R. 482-483).¹⁷ Osborne accompanied the committee, introduced them to Willard, and stated that they desired to bargain (R. 233, 483, 538-539, 702, 726-727). Despite the Union's recent claim that it represented the majority, Willard did not request the Association to prove its representative status but at once agreed to bargain with it (R. 303-304, 539-540, 561, 731).¹⁸

¹⁷ The Board's finding (R. 60-61, footnote 4), on conflicting evidence, that this occurred after the Union's demand for recognition on October 28, referred to in the text, and not before, as respondents contended, is amply supported. Thus, the Association's minutes show that its bargaining committee was selected and instructed to negotiate with Willard, on October 30 (R. 746-750), and Harlan and Herring in their testimony placed the date of the committee's meeting with Willard as after the formal organization of the Association (R. 302, 304, 701). Moreover, Stout testified that the only negotiations of which he knew occurred after the plant resumed regular operations on October 29 (R. 186-187; Company Exh. 2; R. 188, 767). It is also noteworthy that Willard did not refer, during his meeting with the Union's representatives on October 28, to a rival claim to recognition by the Association. It is likely that he would have done so, however, if such a claim had previously been made to him. See also note 19, p. 14, *infra*.

¹⁸ The record shows that 12 employees had joined the Association (Emp. Assn. Exhs. 2, 3; R. 756-765). This is the same number who had joined the Union (*supra*, p. 6; p. 7, note 8). The Board found (R. 64) that the appropriate unit consisted of all employees

Thereupon, Willard entered upon negotiations for a contract with the Association (R. 339, 509-510) without advising the Union of the fact or taking any affirmative action on the Union's request to bargain.¹⁹ Whitelaw, attorney for the Associated Farmers, assisted in the preparation of several drafts of contract which the Association submitted to Willard (Company Exhs. 3, 7; R. 499-503, 487, 716-719, 800-807, 766). On or about November 25, 1941, a contract was entered into between the Ice Company and the Association which was antedated to November 1 (Bd. Exh. 5; R. 311-317, 337-340, 748, 798-799). The contract contained a clause, suggested by Whitelaw (Bd. Exh. 3; R. 502, 542), requiring every employee to become a member of the Association within 15 days after the commencement of his employment, and also a "dues check off" provision (Pars. 15, 16, Bd. Exh. 5; R. 315-316). This contract was renewed on November 1, 1942,

whom the Ice Company customarily rehired for substantial periods in successive seasons. The record does not show the number of such employees. Accordingly, it is not clear whether or not the 12 constituted a majority in the unit. It is clear, however, that even if the Association were the majority designee, it could not possibly be said to be their free and uncoerced choice, in view of respondents' acts of interference against the Union and in support of the Association.

¹⁹ On January 23, 1942, after the Union repeated its claim that it represented the majority (Bd. Exh. 9A; R. 357-358), and after charges were filed with the Board (R. 1-4), Willard advised it by letter that he rejected the claim because "all of our employees belong to a local union which we recognize as the bargaining agents and have made an agreement to that effect" (Bd. Exh. 9B; R. 358). This was Willard's first and only response to the Union's request for bargaining in October. (R. 37.)

for one year with an automatic renewal clause, subject to cancellation on 90 days' notice (Bd. Exh. 8; R. 319-326). It was still in effect at the time of the hearing before the Board.

Upon the foregoing facts the Board's findings (R. 56, 62, 84) that respondents have committed unfair labor practices within the meaning of Sections 8 (2) and 8 (1) of the Act, clearly are supported by substantial evidence.

Respondents Osborne and the Associated Farmers, acting at the request and in the interest of the Ice Company, directly participated in the formation and establishment of the Association as the bargaining agent of the Ice Company's employees. Cf., *N. L. R. B. v. Grower Shipper Vegetable Assn.*, 122 F. (2d) 368, 378 (C. C. A. 9); *N. L. R. B. v. Long Lake Lumber Co.*, 138 F. (2d) 363, 364-365 (C. C. A. 9); cf., also, *N. L. R. B. v. Taylor-Colquitt Co.*, 140 F. (2d) 92 (C. C. A. 4). The Ice Company quickly recognized it as the exclusive representative without inquiry into its right to such status, and in the face of the conflicting claim of the Union.²⁰ Thereafter, the Ice Company firmly entrenched the Association by granting it a form of closed shop and a check-off of dues. See *N. L. R. B. v. Pennsylvania Greyhound Lines*,

²⁰ A neutral employer, when faced with the conflicting representation claims of two rival unions, would not negotiate a contract with one of them until its right to recognition had been finally determined under the procedures set up under the Act. See *Elastic Stop Nut Corp. v. N. L. R. B.*, decided May 1, 1944 (C. C. A. 8).

Inc., 303 U. S. 261, 267; *N. L. R. B. v. Falk Corp.*, 308 U. S. 453, 460-461.²¹

In these circumstances, as is well settled, the Association cannot function as the representative of employees for collective bargaining, contemplated by the Act. "When once it appears that management has had a hand in organizing, supporting or in any wise interfering or collaborating with an 'association' of employees, such an association may not be recognized as the free and voluntary association of employees called for in the act." *N. L. R. B. v. Brown Paper Mill Co., Inc.*, 108 F. (2d) 867, 871 (C. C. A. 5), cert. denied 310 U. S. 651; the *Pennsylvania Greyhound* case, *supra*, 303 U. S. 261, 268; *N. L. R. B. v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 262; *N. L. R. B. v. J. G. Boswell Co.*, 136 F. (2d) 585, 593 (C. C. A. 9); *N. L. R. B. v. Germain Seed & Plant Co.*, 134 F. (2d) 94, 96-99 (C. C. A. 9).

The activities of President Willard of the Ice Company, Office Manager Smith, and Superintendent Pool, in questioning employees as to union membership, in disclosing hostility to the Union, and in suggesting in unmistakable terms that the Ice Company would discharge union adherents (*supra*, pp. 7-8), constituted interference with, and restraint and coercion of, the employees' exercise of their rights under the Act, and therefore violated Section 8 (1) of the Act. E. g., *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518; *International Association of Machinists v. N. L. R. B.*,

²¹ See also *N. L. R. B. v. Moltrup Steel Products Co.*, 121 F. (2d) 612, 617 (C. C. A. 3); *N. L. R. B. v. Wm. Tehel Bottling Co.*, 129 F. (2d) 250, 252 (C. C. A. 8); *N. L. R. B. v. Rock Hill Printing & Finishing Co.*, 131 F. (2d) 171, 173 (C. C. A. 4).

311 U. S. 72, 76; the *Boswell* case, *supra*, 136 F. (2d) 585, 590 (C. C. A. 9); *N. L. R. B. v. Polson Logging Co.*, 136 F. (2d) 314 (C. C. A. 9).

B. The violations of Section 8 (3) and (1) of the Act

The Board found (R. 84) that the Ice Company, in violation of Section 8 (3) and (1) of the Act, discriminated with respect to the hire and tenure of employment of employees Herman T. Pool (R. 69), Lester C. Hart (R. 75), Herman Fruhn (R. 72), Arthur Standifer (R. 76), Perry T. Blankenship (R. 77-78), Henry C. Fredenburg (R. 78), and Leroy H. Davis (R. 71) because they had applied for membership in the Union. We submit that this finding, likewise, is amply supported by substantial evidence, and is therefore entitled to acceptance by the Court.

All of the men in question had been "regular" employees of the Ice Company throughout the 1940-1941 season (R. 520, 587-589, 664-668; Bd. Exhs. 10-14, inclusive, 20-28, inclusive; R. 600-601, 643-651, 832-845; Company Exh. 1A; R. 182-183), and were engaged in "made" work at the plant during the following slack season (*supra*, note 6, p. 7). Many of them had long records of satisfactory service in the Company's employ.²² Davis applied for membership

²² Pool had worked for the Company for short periods in 1929 and 1931, and regularly since 1935 (R. 234-238). Hart was hired in 1926 and was the Company's oldest employee in point of service (R. 400-401); he had experience on a variety of jobs, all of which he admittedly performed in satisfactory fashion (R. 400-401, 461). Fruhn was hired in 1929 (R. 381); Standifer in January 1936 (R. 391); Blankenship in May 1940 (Tr. 426-427); Fredenburg in 1937 (R. 269); and Davis in 1932 (R. 420).

in the Union on October 3, 1941 (R. 286, 421-422), and the others on September 26 (R. 242, 253-254, 284-289, 403-405). Pool, Hart, Blankenship, Fredenburg, and Davis were questioned by Office Manager Smith, Superintendent Pete Pool, or Osborne, as to the Union's activities and the identity of the applicants for membership (*supra*, pp. 7-8, 10). During these conversations, as has been noted (*ibid.*), it was made clear to the men that the Ice Company was opposed to the Union, and that membership in it carried at least the risk of discharge.²³

Nevertheless, these seven employees persisted in their adherence to the Union. When the ice plant resumed normal operations on October 29, 1941, they were the only men on the Ice Company's "regular" staff who remained loyal to the organization, all of the others who had joined having either quit the company's employ or transferred their loyalty to the newly-formed Association.²⁴ The seven in question

²³ Thus, Pool was warned by his brother, Superintendent Pool, that the Company could operate the plant with nonunion labor, and was strongly urged by Osborne to withdraw from the Union (*supra*, pp. 8, 10). Hart was informed by Superintendent Pool that Willard was "sure mad" because the employees had joined the Union (*ibid.*). Blankenship was told that the Union "didn't have a chance" because the men who did all the Company's hiring were "a jump ahead of the unions" (*ibid.*). And Davis was warned by Osborne that the Ice Company would close its plant rather than deal with the American Federation of Labor (*ibid.*). In addition, Herman Pool was told by his brother at the time of his dismissal that in adhering to the Union, he was riding "a blank train" (R. 248).

²⁴ As has been noted (*supra*, p. 6; p. 7, note 8), 12 men in all applied for membership in the Union, including the 7 men here involved. Of the remaining 5, two (Henry Miller and Bailey

were the only working men who, although available, were not restored to the Ice Company's employment.²⁵

We submit that these circumstances, in themselves, raise a fair inference that the men lost their jobs because of their continued union adherence in the face of their employer's opposition. This inference is reinforced by the unconvincing nature of the explanations which the Ice Company offered the Board in an attempt to justify the dismissals on a lawful basis.

The Ice Company claimed, *inter alia*, that the substitution of electric power for Diesel engines, to which reference has been made (note 6, p. 7, *supra*), resulted in the elimination of seven jobs (R. 568, 603).²⁶ But this fact, even if true, obviously does not explain away the significant circumstance that the seven men chosen for elimination from the Ice Company's employ were the only remaining unregenerate union adherents. Moreover, the record shows that

Pool) quit the Ice Company's employ before the new season started (R. 363-364, 582, 874-876), and 3 (Tom Herring, M. K. Stout, and Pete Drinkard) abandoned the Union to become leaders of the Association (*supra*, pp. 11-12, 12-13).

²⁵ Cf. Bd. Exh. 10 (R. 600-601) with Company Exh. 2 (R. 188). Herring's name does not appear on Company Exh. 2, but the record shows that he was in fact in the Ice Company's employ at this time (Tr. 573, 879). Henry Miller, E. J. Jones, M. Wooldridge, Bailey Pool, and E. Broderick, whose names appear on Bd. Exh. 10 but not on Company Exh. 2, voluntarily quit the Ice Company's employ before the new season began (Bd. Exh. 39; R. 859, 363-364, 582, 874-876).

²⁶ In his testimony, Willard spoke of the elimination of eight jobs, but he enumerated only seven (R. 454), and reference to the Ice Company's pay rolls shows at most seven (Bd. Exhs. 10-14, 20-28, both incl.; R. 600-601, 643-651, 832-845; Company Exh. 1A; R. 182-183; Company Exh. 2; R. 188).

the substitution of electric for Diesel power eliminated at most the jobs of four engineers, two engine maintenance men, and one crane operator (R. 568, 603; cf. Bd. Exh. 10, R. 600-601 and Company Exh. 2, R. 188; see also note 26, *supra*). Of the seven men dismissed, Pool was an engineer (R. 236-237, Bd. Exh. 10, R. 600-601), Hart was an engine maintenance man (R. 401), Fruhn, Standifer, and Blankenship were crane operators (Bd. Exh. 10; R. 600-601), Fredenburg worked as a truck driver and also as a laborer on the delivery platform (R. 270), and Davis assisted Officer Manager Smith and had charge of ice deliveries to the packing sheds (R. 421, 436-437, 616-617). It is clear, therefore, that the substitution could not possibly have been the basis for dismissal of two of the three crane operators involved, or of Fredenburg and Davis, all of whose jobs were unaffected by the change. Indeed, two inexperienced employees were transferred at this time to jobs as crane operators to the exclusion of Fruhn, Standifer, and Blankenship (Cf. Bd. Exh. 10, R. 600-601, with Resp. Exh. 2, R. 188).²⁷

Furthermore, the record reveals that two of the four Diesel engineers employed by the Ice Company during the previous season, and one of the engine maintenance men, had voluntarily quit the Company's employ before the new season began, as had a store-room worker and a truck driver (Bd. Exh. 39; R. 859,

²⁷ One of the two was Stout, an engineer, to whom reference has already been made as one of the organizers and leaders of the Association (*supra*, pp. 11, 12-13); the other was Gettle, a store-room employee.

363-364, 582, 874-876; Bd. Exh. 10, R. 600-601). Thus, although seven jobs may have been eliminated by the change of power, it was necessary, at the most, to reduce the staff only by four in addition to the three who had quit, and even two of these four remaining separations from the staff could have been avoided by assigning the men whose jobs were abolished to the vacancies in the storeroom and among the truck drivers. That such transfers were not contrary to the company's practice is evidenced by the fact that Stout (see note 27, *supra*), the remaining engineer whose job was eliminated at this time, was transferred to crane operator.

Finally, the validity of this attempted explanation is conclusively rebutted by the fact that the record shows, as the Board found (R. 79), that "there appears to have been steady work from January 15, 1942, to July 15, 1942, for no fewer than five new men." Thus, it appears from the Ice Company's pay rolls for this period that it employed during each pay-roll period at least five and as many as 15 new men.²⁸ In

²⁸ For the convenience of the Court, we set forth below a list of 31 new employees who were first hired by the Ice Company during the new season. At least 5 of these names appear on each pay roll for the period from January 15 to July 15, 1942 (Bd. Exhs. 16, 17, 29-38, incl.; R. 655-658, 846-857). Fifteen of the new men worked from May 15 to June 1, 1942 (Bd. Exh. 35; R. 853-854).

LIST OF NEW EMPLOYEES

<i>Name</i>	<i>First appearance on pay roll for semi-monthly period ending</i>
C. D. Allen-----	February 1, 1942 (Bd. Exh. 16; R. 655).
James Bedient-----	May 15, 1942 (Bd. Exh. 34; R. 852).
Raymond Bentley-----	May 15, 1942 (Bd. Exh. 34; R. 852).
R. S. Brixey-----	February 1, 1942 (Bd. Exh. 16; R. 655).
G. Daily-----	February 1, 1942 (Bd. Exh. 16; R. 655).

these circumstances, it is clear that the Ice Company's assertion that there was not enough work for all the "regular" employees from the preceding season, is belied by the facts.

In addition to the unsupportable reliance upon the elimination of certain jobs due to the change in the nature of its operations, the Ice Company pointed to various other circumstances as allegedly explaining the loss of employment of the seven men in question. However, these attempted explanations, likewise, are refuted by the record, as reference to the facts in the individual cases plainly shows.

LIST OF NEW EMPLOYEES—Continued

<i>Name</i>	<i>First appearance on pay roll for semi-monthly period ending</i>
Jake Dungan.....	May 15, 1942 (Bd. Exh. 34; R. 853).
Nathan Otis Edwards.....	March 15, 1942 (Bd. Exh. 30; R. 848)
Ted Eugster.....	May 15, 1942 (Bd. Exh. 33; R. 851).
W. Faulkner.....	February 1, 1942 (Bd. Exh. 16; R. 655).
Pearl Fauver.....	May 15, 1942 (Bd. Exh. 34; R. 852).
Cleo K. Green.....	May 1, 1942 (Bd. Exh. 33; R. 851).
James Green.....	July 1, 1942 (Bd. Exh. 37; R. 856).
Phillip Griffin.....	June 1, 1942 (Bd. Exh. 35; R. 853).
Delber Hall Guy.....	March 1, 1942 (Bd. Exh. 29; R. 847).
John Herron.....	May 15, 1942 (Bd. Exh. 34; R. 852).
A. Hensly.....	February 1, 1942 (Bd. Exh. 16; R. 655).
V. E. Henson.....	June 15, 1942 (Bd. Exh. 36; R. 855).
L. E. Hodges.....	February 1, 1942 (Bd. Exh. 16; R. 655).
Billy Allen Hogue.....	July 15, 1942 (Bd. Exh. 38; R. 857).
Harry Linker.....	May 15, 1942 (Bd. Exh. 34; R. 852).
Leroy Marlin.....	June 1, 1942 (Bd. Exh. 35; R. 853).
Manuel Mazon.....	June 1, 1942 (Bd. Exh. 35; R. 853).
Menno Simon Nickel.....	May 1, 1942 (Bd. Exh. 33; R. 851).
Sterling Paris.....	March 1, 1942 (Bd. Exh. 29; R. 847).
Francis Phillips.....	May 15, 1942 (Bd. Exh. 34; R. 853).
J. Raine.....	February 15, 1942 (Bd. Exh. 17; R. 657)
Joe Sigrist.....	June 1, 1942 (Bd. Exh. 35; R. 853).
William Starner.....	May 1, 1942 (Bd. Exh. 33; R. 851).
Oran Stephens.....	January 15, 1942 (Company Exh. 1B; R. 184).
Dorman Stewart.....	January 15, 1942 (Company Exh. 1B; R. 184).
Dorsey Williams.....	June 1, 1942 (Bd. Exh. 36; R. 855).

With respect to *Pool*, who was the superintendent's brother, the Company relied upon an alleged rule against employing relatives of supervisors (R. 247, 580). In support of this basis for the discharge, Willard testified that, a year before the dismissal occurred, some of the employees had complained to Office Manager Smith that the superintendent was showing favoritism for his brother (R. 468-470). It is significant, however, that Willard did not act on these alleged complaints until a year later, in October 1941, when for the first time he issued instructions to Superintendent Pool that relatives of supervisors were no longer to be employed (R. 470-471, 556). Thus, the rule against employment of relatives was suddenly put into effect when the superintendent's brother became a union member. The Ice Company did not explain the long delay in announcing the rule, and it does not appear that the alleged complaints of favoritism were ever repeated.

It is also significant that, as Willard admitted (R. 470-471, 556), he never investigated the complaints or even discussed them with anyone until October 1941. Moreover, neither Willard nor Smith named any of the complaining employees, and Superintendent Pool denied having favored his brother (R. 601-602). Finally, so far as appears, no other employees except Pool were affected by the alleged rule. It is understatement, we submit, to say that these facts afford rational basis for the inference that the rule was merely improvised to get rid of an undesirable union adherent.

With respect to *Pool*, *Blankenship*, *Fredenburg*, and *Standifer*, the Ice Company also asserted that they did not apply for reinstatement when the regular season resumed (R. 30, 32, 33). As has been noted, however (*supra*, note 6, p. 7), the record is clear that it was the practice to recall "regular" employees such as these men were, even though they did not apply. Moreover, the fact is that Blankenship (R. 376-379), Fredenburg (R. 276-278, 466), and Standifer (R. 394), asked Superintendent Pool, President Willard, or Office Manager Smith for work, but their requests were ignored.

The Ice Company further alleged before the Board (R. 30) that *Standifer* was dismissed when he finished the particular work on which he was engaged,²⁹ and, as President Willard testified, that although there was available other work which Standifer was capable of performing, Superintendent Pool selected more capable men (R. 455-456). The Board properly did not credit these attempted explanations (R. 75-76), either, for the record shows, contrary to the Company's assertion, that at the time he was dismissed, Standifer had started, but had not yet finished, painting the engine room (R. 397). And Willard's statement that Standifer was passed over for more capable men is not supported by any evidence in the record except Willard's bare assertion to such effect. Moreover, Standifer had worked for the Ice Company for over 5 years, and had over two years of experience as a crane operator (R. 391-392). It is hardly likely in these circumstances

²⁹ He was laid off on October 3, 1941 (R. 30).

that he was less apt than Stout and Gettle, who were assigned to crane operating but had no such experience whatever.³⁰

A fuller statement of the facts seems necessary for an understanding of the remaining three cases. *Hart*, as has been noted (*supra*, note 22, p. 17), was employed by the Ice Company in 1926, and was its oldest employee in point of service (R. 400). He worked for a short time as a laborer, 2½ or 3 years as a crane operator, 2 or 2½ years as an engineer, and thereafter, until the beginning of the 1941-1942 season, as plant mechanic (R. 400-401). In all these jobs his services admittedly were satisfactory (R. 461).

On approximately October 15, he returned from a 2-week vacation (Tr. 493-494, 504). Superintendent Pool then told him that Willard had given instructions to lay "everybody" off "until further notice" (R. 405-506). Thereafter, at approximately weekly intervals, Hart asked Pool when he should return to work and was told at first that the superintendent had not received "any orders yet" and finally, after the plant had begun its fall operations, that the superintendent himself intended to perform the mechanical work in the plant (R. 406-407). The Ice Company regularly required two mechanics, but Hart was the only such craftsman in its employ at the time of his dismissal.³¹

³⁰ It strains credulity that Standifer would have been permitted to work as a crane operator for over 2 years, if he were not at least reasonably efficient.

³¹ Wooldridge, the other mechanic, had left the Company's employ during the slack season (Bd. Exhs. 10, 39; R. 600-601, 859).

The Ice Company contended (R. 30-31) that Hart was laid off because there was no longer any work for him due to the elimination of the Diesel engines. It appears, however, that at the time of his dismissal Hart was engaged in, but had not completed, the construction of an ice dump (R. 417). This work was later sent out for completion (R. 417-418). Moreover, Hart's work during the regular ice season generally included such tasks as building ice chutes, making crusher teeth for the ice machines in the sheds, and general repair work, all of which duties occupied approximately 75 percent of his working time and were in no way connected with the operation and maintenance of the Diesel engines (R. 401, 411, 418). It appears also that Hart's maintenance work required ability to handle electrical jobs since the Diesels were used to generate electric power (R. 175-176). There is no evidence that the amount of mechanical work had decreased at this time to such an extent that not even one mechanic was needed; indeed, the contrary is suggested, for the record shows that more mechanical work was available than Pool could do himself, and that much of it was sent out (R. 608-609). The Ice Company did not explain to the Board why it was suddenly decided to have this work done outside the plant.

Other circumstances likewise suggest that a lack of work was not the reason for Hart's discharge. We have already referred to the general availability of jobs other than those in the engine department, during the new season (*supra*, p. 21). Hart had considerable experience in most of the jobs about the plant,

including at least 2½ years as a crane operator, and had performed these jobs satisfactorily (*supra*, p. 25). Yet, although he repeatedly applied for work, the Ice Company ignored him, gave the crane operator jobs to nonunion men without experience, and during the season filled at least five other jobs with new men (*supra*, pp. 20, 21-22).

Fruhn worked regularly for the Ice Company as a crane operator from 1929 until the usual seasonal lay-off in July 1941 (R. 381). During that summer, the Ice Company arranged to have him work for the contractors engaged in the conversion of the plant to electric power, so that there would be a full staff intact for its fall operations (R. 389; *supra*, note 6, p. 7).

Following *Fruhn's* application for union membership on September 26, 1941, and both shortly before and after the plant reopened, *Fruhn* asked Superintendent Pool, Office Manager Smith, and President Willard for his old job and was repeatedly told that it was not yet time for him to return (R. 384-386). In the meantime, as we have already noted (*supra*, p. 20), two of the jobs as crane operators had been filled by Stout and Gettle, who had no experience at such work.

On about December 28, *Fruhn* was reemployed, but as a storeroom laborer. This was strenuous work, for which only strong men were suited (R. 386-387, 563, 626-629). *Fruhn*, as the Trial Examiner observed (R. 73), was a slight, thin man who, it was apparent, could not perform such labor. *Fruhn* was able to do the work for only 1 day (R. 386-387). He then asked Superintendent Pool to return him to his old job as

crane operator, but the superintendent ignored his request (R. 388). He thereupon quit the Ice Company's employ (R. 387).

The Ice Company admitted in its answer to the Board's complaint (R. 34), that Fruhn's work as a crane operator was satisfactory, but it contended at the hearing that he was not reinstated to that position because he had "tinkered" for years with the crane which he operated so that it required frequent adjustment (R. 474, 556-557). But Fruhn had operated cranes for the Ice Company for 11 years, and there was no testimony that either Pool or Willard had ever objected to the manner in which he handled a crane. Nor was he given this or any other reason for the refusal to return him to his regular job at the time. Under these circumstances it was almost mandatory upon the Board to reject, as it did (R. 72),³²

³² At the hearing, the Ice Company referred to its employment of Fruhn as a storeroom laborer as evidence of its nondiscriminatory attitude towards the union employees (R. 476-478). This argument is specious. As has been noted, the record establishes the Company's open hostility to the unionization of its employees (*supra*, p. 16), its clear refusal to continue the employ of any of the persistent union adherents (*supra*, pp. 18-19), and its otherwise inexplicable deprivation of Fruhn of the crane operator's job which he had held for 11 years (*supra*, p. 27). Against this background the Ice Company's employment of Fruhn as a store-room laborer, a heavy job which he clearly could not perform, was merely additional persuasive evidence of the Ice Company's intention to discriminate against Fruhn as a union member.

Fruhn's final separation from the Ice Company's employ because he could not do the work discriminatorily assigned to him, was in no sense voluntary but rather the inevitable result of his employer's discrimination against him and thus the equivalent of

this explanation for the Ice Company's refusal to continue Fruhn as a crane operator.

Davis, who had been in the Ice Company's employ since 1932, had charge of the deliveries of ice to the packing sheds during the regular season (R. 420, 436-437, 616-618), and sold ice to customers from the Company's platform during the slack summer months (R. 438). He also assisted Office Manager Smith in the office (R. 420-421, 436-437, 616).

After he joined the Union on October 3, 1941, Osborne suggested to him that an unaffiliated union be formed by the employees (R. 292-293, 428). Davis replied that such an association would be ineffective, and stated that he had joined the Union and would remain a member until the majority of the employees abandoned it (R. 428). Osborne warned Davis that the Ice Company would close its plant rather than deal with the American Federation of Labor (*ibid.*).³³

On October 16, he was informed by the office manager that although his work had been satisfactory, the Ice Company did not need his services at that time of year, that he could return around the first of the year, but that since there would be no more than 6

a discriminatory discharge. See *N. L. R. B. v. Star Publishing Co.*, 97 F. (2d) 465, 468-471 (C. C. A. 9); *N. L. R. B. v. American Potash and Chemical Corp.*, 98 F. (2d) 488, 493-494 (C. C. A. 9), cert. den. 306 U. S. 643; *Clover Fork Coal Co. v. N. L. R. B.*, 97 F. (2d) 331 (C. C. A. 6).

³³ In light of the foregoing, the repeated questioning of employees as to the identity of union members, and the entire record, the Board properly did not credit the Ice Company's assertion that it did not know Davis was a member of the Union (R. 70).

or 7 months of work for him each year, it would be better if he secured a job "somewhere else" (R. 432-433).

The Ice Company claimed before the Board that Davis was released because of lack of work during the slack season and because of the Company's desire to cut down overhead (R. 31, 621-623). In support of the contention as to lack of work, Willard and Office Manager Smith testified that the former issued instructions to lay Davis off at the beginning of the 1941 slack season, in about July (R. 461-462, 550-551, 623-624). Willard further testified that he repeated these instructions to Smith on about September 20 (R. 462, 551). Davis, however, was in fact not discharged until almost a month later, when the slack season was nearing its close, regular operations were about to be resumed, and shortly after the union activities began. It seems unlikely that Davis should have been retained throughout the slack season in this fashion, if lack of work were the true reason for his dismissal.

Moreover, the record shows that Herring, vice president of the Association, and a new employee, Jack Garber, who was hired by the Ice Company on about September 1, 1941, have done Davis' work on the platform and in the office, respectively, since his dismissal (R. 434, 446, 463-465, 671-672). Herring's salary for his work on the platform exceeded that paid Davis (cf. R. 672-675 and 444-445); and Garber was retained throughout the following slack summer season (R. 555-556). In these circumstances, we submit, the

Board clearly was entitled to reject the reasons offered by the Ice Company for Davis' dismissal.

Recapitulation

In sum, the record shows that the seven men involved in this proceeding were the only union adherents remaining in the Ice Company's employ when the new ice season began. They were the only ones who, although available, failed to retain their jobs, all other available "regular" employees from the previous season being reinstated. The record shows, further, that the Ice Company strongly opposed dealing with the Union, and in various ways sought to discourage the employees' adherence to it and to instigate the formation of an unaffiliated union. Much of this anti-union conduct was specifically but unsuccessfully directed to several of the men involved herein. Finally the explanations upon which the Company relied to justify the dismissals on a lawful basis, were highly unconvincing and in some cases clearly untrue.

We submit that, under these circumstances, there was clearly rational basis for the Board's inference that the men in question lost their jobs because of their union affiliation.

POINT III

The Board's order is valid

The provisions of the Board's order as to the Ice Company, requiring it to cease and desist from its unfair labor practices, to withdraw recognition from and disestablish the Association as the collective bargaining representative of the employees, to cease giving

effect to its contract with that organization, and to offer reinstatement with back pay to the employees discriminated against (R. 92-94), are the usual provisions upon the findings made. We respectfully suggest that their validity is so well settled and commonplace as not to warrant citation of decisions.

The Board further ordered that the Associated Farmers and Osborne cease and desist (1) from dominating, interfering with, or supporting the Association or any other labor organization of employees of the Ice Company or of other employers; (2) from soliciting and collecting funds from the Ice Company or any other employer to be used for the purpose of interfering with employees' rights under the Act; and (3) from in any other manner interfering with, restraining, or coercing the employees of the Ice Company or any other employer in the exercise of the rights guaranteed in Section 7 of the Act (R. 94-95). These provisions of the order are also warranted.

The record here shows, as the Board found (R. 52-53), that the Associated Farmers and Osborne, financially supported by the Ice Company and other employers, have regularly and as part of a deliberate policy, furnished information to members of the Associated Farmers concerning the "organizational activities" of their employees, have assisted and organized a number of employee-associations, and have opposed the efforts of affiliated unions to become the representatives of employees in Imperial Valley (R. 212, 214, 216-217). Moreover, the Associated Farmers' and Osborne's interference with the organizational activities

of the Ice Company's employees was undertaken as part of a current, general campaign by the Associated Farmers to "see [that the organizational activities of the Union in the Valley] didn't get out of hand" (R. 170). In these circumstances, it is manifest that the Board's order merely requires the Associated Farmers and Osborne to abandon the unlawful conduct which constituted the unfair labor practices found by the Board, and other like and related acts whose commission is fairly to be anticipated from the Associated Farmers' and Osborne's admitted activities in the past. Thus, the Board's order is clearly "adapted to the situation which calls for redress" (*N. L. R. B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348), and well within the Board's competence to make. *N. L. R. B. v. Express Publishing*, 312 U. S. 426, 436-437.

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence and that its order is valid and proper and should be enforced.

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JUNE 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151 *et seq.*) are as follows:

SEC. 2. (2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly. * * *

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. * * *

SEC. 10. (c) * * * If upon all the testi-

mony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

SEC. 10. (e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power * * * to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

No. 10695

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**HOLTVILLE ICE AND COLD STORAGE COMPANY, ASSOCIATED
FARMERS OF IMPERIAL COUNTY, AND HUGH T.
OSBORNE, RESPONDENTS**

**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

In our main brief, we have referred the Court to the evidence and well-established principles which in our view properly impelled the Board to find that respondents violated the Act. Accordingly, it seems unnecessary to discuss here the substantial evidentiary support for those few of the Board's factual findings which respondents openly challenge in their briefs. But respondents also make a number of misstatements in their briefs as to the record and assert several alleged defenses which either have been rejected by the courts or clearly do not apply in the situation actually disclosed by the record and found by the Board. This reply brief is submitted in order to

direct the Court's attention to, and correct, what seem to us to be the more important of these matters.¹

1. Respondents contend (Co. Br., pp. 16-17, 24-26; A. F. Br., pp. 23-24, 30-32) that the statements made by Superintendent Pool and respondent Osborne to the Ice Company's employees were not threatening or coercive but were mere expressions of personal opinion, protected by the guaranty of "free speech" in the First Amendment of the Constitution. But the superintendent's statements to various employees that the Company's president was "sure mad" because they had joined the Union, that the Union "didn't have a chance" because the men who did the hiring were "a jump ahead of the unions," and that joining the Union was not "a very good idea" since the company could get "plenty of nonunion men" (Bd. Br., p. 8), carried on their face threats of economic reprisals for union adherence. Moreover, the threats were given substance by the Company's virtual dismissal soon thereafter of all seven employees who remained members of the Union (Bd. Br., pp. 18-19). Likewise threatening and coercive on its face was respondent Osborne's statement to employee Davis that Willard would close the plant rather than deal with the Union (Bd. Br., p. 10).² It is well settled that such coercive conduct is

¹ In the following discussion we shall make references to the brief of respondent Holtville Ice and Cold Storage Company as "Co. Br., p. —" and to the joint brief of respondents Associated Farmers of Imperial County and Hugh T. Osborne as "A. F. Br., p. —."

² Respondent Ice Company is, of course, unsound in its contention (Co. Br., p. 28) that an employer has a right to shut down his plant or to threaten to do so, in order to avoid dealing with a labor

not constitutionally protected merely because it involves the use of oral statements. E. g., *N. L. R. B. v. Virginia Electric & Power Co.*, 314 U. S. 469, 477; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9); *N. L. R. B. v. Schaefer-Hitchcock Co.*, 131 F. (2d) 1004, 1008 (C. C. A. 9); *N. L. R. B. v. Lettie Lee, Inc.*, 140 F. (2d) 243, 249 (C. C. A. 9).

2. Respondents assert (Co. Br., pp. 19-20, 21-22; A. F. Br., pp. 12-15) that, contrary to the Board's finding (R. 61), the Association was the result of the spontaneous action of the employees, without interference or domination by respondents. In attempting to support this position, they not only distort the record but, in several instances, misstate the testimony of the very witnesses upon whom they rely.

a. In order to demonstrate that the Association was the free choice of the employees, respondents state (Co. Br., pp. 19-20, 22; A. F. Br., p. 13) that "all" employees joined the Association. Of course, they implicitly exclude the 7 "regular" employees whose employment the Ice Company terminated, as the Board properly found (R. 67-80; and see Bd. Br. p. 17), because of their membership in the Union. In the light of the record, therefore, the substance of respondents' contention is that, after the company's

organization which represents his employees. *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 76; *N. L. R. B. v. Electric Vacuum Cleaner Co., Inc.*, 315 U. S. 685, 693; *N. L. R. B. v. National Motor Bearing Co.*, 105 F. (2d) 652, 657-658 (C. C. A. 9); *N. L. R. B. v. J. G. Boswell Co.*, 136 F. (2d) 585, 590 (C. C. A. 9); *N. L. R. B. v. Polson Logging Co.*, 136 F. (2d) 314, 314-315 (C. C. A. 3); *N. L. R. B. v. Long Lake Lumber Co.*, 138 F. (2d) 363, 364 (C. C. A. 9).

sweeping dismissal, because of their union activities, of the 7 employees who were members of the Union, "all" 12 of the remaining employees (Bd. Br., note 18 at pp. 13-14) "freely chose" to become members of its rival, the Association. We respectfully suggest that no comment is necessary concerning the meritless nature of this contention. See *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 598-599.

b. Respondent Ice Company also states (Co. Br., p. 22) that the Union failed to file "any complaint of wrongdoing" until December 18, 1942, more than a year after the Association had secured its first contract with the company, during which time (it asserts) the employees were presumably content with the Association, and that "It hardly seems fair to let the union sleep on its rights, if it had any, for a period of a year and then ask the Board to penalize respondent Ice Company." But the record is clear that charges, alleging that the Association was company-dominated, were filed by the Union on January 3, 1942, slightly more than a month after the execution of the Association's first contract (R. 47, note 2; and see also the certified record filed by the Board with the clerk of the court). Indeed, respondent itself refers to the charge filed on December 18, 1942, as "the third amended charge" (Co. Br., p. 22).

c. Similarly, the Associated Farmers' brief (p. 12) at least suggests that an immediate and general revulsion for the Union on the part of the employees the day after they joined the Union, led to the formation of the Association. Thus, Associated Farmers

states that on February 27, all 10 union members "began looking around for another method to give them a union of which they were in control." There is no support in the record for this statement. Indeed, the testimony is clearly to the contrary. Only 3 of the 11 union members ever joined the Association (Bd. Br., note 24, pp. 18-19). Moreover, employee Herring, upon whose testimony respondents rely in this regard, testified that on September 27, and for a few days thereafter until Osborne visited him, the possibility of an unaffiliated union was discussed only between himself and Harlan, who was not a union member (R. 690, 693-694), that thereafter, the 3 union members to whom Herring broached the subject said that they would remain with the Union (R. 695), and that when Osborne met with some of the employees a week or so later to "help us get our union started," the meeting was attended by 8 employees, only 4 of whom had previously joined the Union (R. 695-697).³

d. Respondent Associated Farmers takes even greater liberties with the record when it asserts (A. F. Br., p. 14) that before Willard asked Osborne to "interest" himself in the company's labor troubles, Herring had already enlisted Osborne's aid in the formation of the Association. In support of its assertion, Associated Farmers relies upon Willard's testimony that when he saw Osborne, the latter said that he already knew all about the union activities (A. F. Br. p. 14). But the record is clear that Osborne was then referring, not to a movement for an unaffiliated

³ Herring, Drinkard, Stout, and Fredenburg (R. 696).

association, but to the general activities of the Union in the Valley which, as they spread to the Ice Company's plant, had begun to disturb Willard (Bd. Br. pp. 8-9). And Osborne himself testified (R. 223-224), as the Board properly found (R. 57, 61), that he first "contacted" Herring and the other employees and assisted the formation of the Association *after* he had visited Willard.

3. Claiming that the employees desire to be represented by the Association, respondents contend that (Co. Br. pp. 19-23; A. F. Br. p. 21)—

although an inside union is formed in violation of the Act, nevertheless the Board cannot order it disestablished if in fact it is the clear desire of the employees to have such an inside organization (Co. Br. p. 23).

Respondents are in error both in their premise and in their conclusion. In view of respondents' illegal assistance and support of the Association, it cannot be said that the employees' membership in the Association reflects their free choice. The Board properly found that the Association, as a dominated labor organization (R. 62, 81, 84), was an obstacle to the employees' exercise of their rights under the Act, was incapable of serving the employees as a genuine collective bargaining agency, and should, therefore, be disestablished in order to effectuate the policies of the Act (R. 62, 81, 93). The Supreme Court and this Court have recognized the power of the Board upon the basis of such findings to order the disestablishment of an illegal labor organization even though it appears

to be accepted by the employees as their agent. *N. L. R. B. v. Newport News Shipbuilding and Dry Dock Co.*, 308 U. S. 241, 248-250; *N. L. R. B. v. Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50, 60; *N. L. R. B. v. Idaho Refining Co.*, 14 L. R. R. 573, 574 (C. C. A. 9), decided June 22, 1944. See also *N. L. R. B. v. Falk Corp.*, 308 U. S. 453, 459-462. We know of no outstanding decisions to the contrary; *N. L. R. B. v. Automotive Maintenance Machinery Co.*, 116 F. (2d) 350 (C. C. A. 7), upon which respondents rely (Co. Br., p. 22, A. F. Br., p. 21), was reversed by the Supreme Court (315 U. S. 282).

4. Respondent Ice Company asserts (Br. p. 29) that Pool, Blankenship, Fredenburg, and Standifer did not apply for reinstatement after their seasonal lay-off and that the Company's failure to recall them to work did not violate the Act. But the record shows, as the Board found (R. 69, 77, 78, 76) upon substantial evidence (Bd. Br., p. 23-24), that the Company *discharged* Pool, and that Blankenship, Fredenburg, and Standifer did, in fact, apply for reinstatement. Moreover, Willard and Standifer testified (R. 452-453, 520, 399) that "regular" employees, such as the men involved herein were, were customarily not required to apply for reemployment each succeeding season, but were sent notice to report for work as needed by the Company. Under the circumstances, the Company's departure from its custom, with respect to the recall of these employees, amounted to a refusal of continued employment and, when motivated by the employees' union membership and activities as the Board here

found, constituted discrimination forbidden by the Act.
See *Marlin-Rockwell Corporation v. N. L. R. B.*, 133
F. (2d) 258, 260 (C. C. A. 2).

Respectfully submitted.

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JULY 1944.

No. 10695

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HOLTVILLE ICE AND COLD STORAGE COMPANY, ASSO-
CIATED FARMERS OF IMPERIAL COUNTY, and HUGH T.
OSBORNE,

Respondents.

On Petition for Enforcement of an Order of the
National Labor Relations Board.

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County and Hugh T. Osborne.

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TOPICAL INDEX.

	PAGE
Jurisdiction	1
Statement of the case.....	2
Summary of argument.....	3
Argument	4
Point I. The Act is not applicable to the operations of the Ice Company and therefore not applicable to these respondents....	4
Point II	12
A. Organization and functioning of inside union, Holtville Ice & Cold Storage Employees Association.....	12
B. Freedom of Ice Company employees from interference, restraint, or coercion in the exercise of the right of self- organization	19
C. Freedom of employees from domination or interference with the formation of their labor organization.....	22
D. Neither Osborne nor Associated Farmers was employer within the meaning of Section 2(2) of the Act.....	25
Point III	30
A. The declarations made by Associated Farmers and Os- borne must be protected under the Fifth Amendment of the Constitution	30
Point IV. The order of the Board is invalid.....	32
Conclusion	34

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Butler Bros. v. N. L. R. B., 134 Fed. (2d) 981.....	11
Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197, 83 L. Ed. 126, 59 S. Ct. 206.....	18
Continental Box Co. v. N. L. R. B., 113 Fed. (2d) 93.....	31
Cudahy Packing Co. v. N. L. R. B., 118 Fed. (2d) 295.....	10
Edison Co. v. Labor Board, 305 U. S. 197.....	6, 7, 10
I. A. of M. v. Labor Board, 311 U. S. 72.....	29
Jacksonville Paper Co. v. N. L. R. B., 137 Fed. (2d) 148.....	31
Long Lake Lumber Co. case, 138 Fed. (2d) 363.....	25
National Labor Relations Board v. A. S. Abell Co., 97 Fed. (2d) 951	17
National Labor Relations Board v. American Tube Bending Co., 134 Fed. (2d) 993, 146 A. L. R. 1017.....	24, 31
National Labor Relations Board v. Automotive Maintenance Machinery Co., 116 Fed. (2d) 350.....	21
National Labor Relations Board v. Baltimore Transit Co., 140 Fed. (2d) 51, cert. den. 64 S. Ct. 487.....	6, 7
National Labor Relations Board v. Bell Oil & Gas Co., 98 Fed. (2d) 406, rehearing den. 98 Fed. (2d) 870.....	17
National Labor Relations Board v. Bradford Dyeing Ass'n, 310 U. S. 318.....	10
National Labor Relations Board v. Citizen-News Co., 134 Fed. (2d) 962	24, 31
National Labor Relations Board v. Cleveland-Cliffs Iron Co., 133 Fed. (2d) 295.....	6, 8
National Labor Relations Board v. Columbia Enameling & Stamping Co., 306 U. S. 292, 83 L. Ed. 660, 59 S. Ct. 501....	18
National Labor Relations Board v. Fainblatt, 306 U. S. 601.....	10
National Labor Relations Board v. Henry Levaur, Inc., 115 Fed. (2d) 105	10
National Labor Relations Board v. Moenich Tanning Co., 121 Fed. (2d) 951.....	27

National Labor Relations Board v. Montgomery Ward & Co., 133 Fed. (2d) 676.....	28
National Labor Relations Board v. Superior Tanning Co., 117 Fed. (2d) 881.....	31
National Labor Relations Board v. Union Pacific States, Inc., 99 Fed. (2d) 153.....	16, 34
National Labor Relations Board v. Virginia Electric & Power Company, 314 U. S. 469.....	24, 31
Press Co. v. National Labor Relations Board, 118 Fed. (2d) 937	24, 31
Pueblo Gas & Fuel Co. v. N. L. R. B., 118 Fed. (2d) 304.....	9
Shipper Vegetables Association, 122 Fed. (2d) 368.....	25
Southern Colorado Power Co. v. N. L. R. B., 111 Fed. (2d) 539	6, 8
Taylor-Colquitt Co. case, 140 Fed. (2d) 92.....	25

MISCELLANEOUS.

Final Report of Special Committee of House of Representatives, 76th Cong., 1st Sess., appointed pursuant to H. Res. 258 to investigate N. L. R. B., Dec. 28, 1940, in Vol. 4, Bureau of National Affairs, Verbatim Record of Proceedings, p. 445, at pp. 473-474	26
--	----

STATUTES.

Civil Code, Sec. 2295.....	22
Civil Code, Sec. 2298.....	22
Civil Code, Sec. 2299.....	22
Civil Code, Sec. 2300.....	23
National Labor Relations Act, Sec. 2(2)	2, 3, 22, 27
National Labor Relations Act, Sec. 7	2, 3
National Labor Relations Act, Sec. 8(1).....	2, 3, 34
National Labor Relations Act, Sec. 8(2).....	2, 3, 34
National Labor Relations Act, Sec. 10(c) (49 Stat., U. S. C., 1940 Ed., Title 29, Sec. 151 et seq.).....	1

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vs.

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CIATED FARMERS OF IMPERIAL COUNTY, and HUGH T.
OSBORNE,

Respondents.

On Petition for Enforcement of an Order of the
National Labor Relations Board.

Brief for Respondents, Associated Farmers of Imperial
County and Hugh T. Osborne.

Jurisdiction.

This case is before the Court upon petition of the National Labor Relations Board for an enforcement of its order issued against these respondents pursuant to Section 10(c) of the National Labor Relations Act (49 Stat. U. S. C. 1940 ed., Title 29, Section 151, *et seq.*) This Court has jurisdiction of the proceeding under Section 10(c) of the Act since these respondents are domiciled or reside within this judicial circuit. The respondent Associated Farmers of Imperial County has its principal place of business within Imperial County and Hugh

T. Osborne resides within said county wherein the alleged unfair labor practices are alleged to have occurred.

The decision and order of the Board are set forth in pages 91-96 of Record and the order with respect to these respondents is set forth in pages 94 (2) to 96—Record.

Statement of the Case.

On April 23, 1943, the Trial Examiner made and filed his Intermediate Report [R. 47-90] and on July 22, 1943, the Board issued its Decision and Order [R. 91-96] and adopted the findings, conclusions and recommendations of Trial Examiner. [R. 92.] Its Findings and Conclusions of Law are in short:

(1) That these respondents are employers of the employees involved in this proceeding within meaning of Section 2(2) of the Act;

(2) That these respondents interfered, restrained, and coerced the employees of the Ice Company in the exercise of their rights guaranteed by Section 7 of the Act;

(3) By such interference and domination these respondents have and are engaging in unfair labor practices within the meaning of Section 8(1) of the Act; and

(4) By dominating and interfering with formation of association are engaging in unfair labor practices within meaning of Section 8(2) of the Act:

And thereupon ordered these respondents:

(5) Not only to *desist from* (a) dominating or interfering with the formation of the association of this Ice Company, but (b) from contributing support and assistance to any other employer; and (c) soliciting funds from this employer *or any other employer* to be used in whole

or part for the purpose of interfering with exercise of the rights of employees guaranteed by Section 7 of the Act, and to mail out appropriate notices to all of its members and contributors.

On March 2, 1944, the Board filed with this Court its petition for enforcement of its order; on March 13, 1944, these respondents filed their answer to petition. [R. 111-116.] In said answer respondents challenge the sufficiency of evidence to support the Board's Findings and Conclusions of law, and further challenges the jurisdiction of the Board's order in that it is in violation of the rights of freedom of speech as guaranteed by the Constitution.

These respondents question the propriety of the Board's order.

The jurisdiction of this Court to hear and determine the matter is not questioned but the jurisdiction of the Board has been and still is challenged.

Summary of Argument.

I. The Act is not applicable to the operations of Ice Company, and therefore not applicable to its alleged agents found to be the employers of the employees within purview of Section 2(2) of the Act.

II. The Board's Findings of Fact from which it concludes (1) that these respondents have violated Sections 8(1) and 8(2); (2) and that these respondents are employers within the meaning of Section 2(2) of the Act, are not supported by substantial evidence.

III. The Board's order is in excess of its jurisdiction and in violation of the right of freedom of speech as guaranteed by the Constitution of the United States.

IV. The Board's order is invalid.

ARGUMENT.

POINT I.

The Act Is Not Applicable to the Operations of the Ice Company and Therefore Not Applicable to These Respondents.

The Labor Board in its brief attempts summarily to dispose of the question of the jurisdiction of the Board over the labor disputes between the Ice Company and the Union. This question may not so easily be disposed of. It is the contention of the Ice Company that its business activities are wholly intrastate in character and that these intrastate transactions do not "affect" interstate commerce. It must, of course, be recognized that almost without exception the jurisdiction of the Board has been upheld. However, it cannot be true that the Board has jurisdiction in every case. There are manifestly many employers who are not subject to the jurisdiction of the Board and who do not fall within the provisions of the Act. Neither can it be determined in advance that the conclusion of the Board upon the question of jurisdiction is binding upon the courts. The Board may err; in this case the assumption of jurisdiction by the Board was erroneous.

At the outset, a distinction must be noted between those employers who are directly engaged in interstate commerce and those whose activities are claimed to have but indirect effect on that commerce. Where the goods of the employer are brought into the state from beyond its territorial boundaries and where the goods of the employer are sent by the employer beyond the borders of the state, the activities of the employer are directly concerned with commerce between the states. On the other hand, where

the employer is not himself engaged in interstate commerce, his activities may, nevertheless affect interstate commerce. In the first instance, no matter how small in amount or in percentage the interstate business of the employer may be, it is manifest without proof that a cessation of the business of the employer will have some effect upon the flow of commerce between the states. In the latter case, the indirect effect of the business activities of the employer upon interstate commerce must be the subject of proof. It will not do to show merely that there is a possibility of some effect upon interstate commerce by reason of activity which has at best but an indirect effect upon goods moving from one state to another.

In the case at bar *no proof* was adduced before the Board which tended to show that an interference with the business activities of the business of the Ice Company would cause a lessening of the flow of vegetables from California into Arizona or any other state. The Ice Company offered to prove that there were four other ice companies within easy distance of the plant of the Company and that if the Holtville Ice and Cold Storage Company were to be shut down there would ensue no interruption in the flow of vegetable shipments, but that the flow of such shipments would continue "without interruption." [R. 512-513.] There was no proof that any of the ice manufactured and sold by the respondent Ice Company left the state of California. The best that can be said of the proof adduced before the Board is that it showed the placing of ice in cars and crates by the purchasers of the ice. Ice is not a permanent thing; it is evanescent in character,—it melts. Judicial notice may be taken that Imperial Valley is an extremely hot coun-

try. The proof goes so far, only as to show that the cooling effect of the ice on the vegetables was desired by the shippers of the vegetables. Many of the cars of vegetables, thus iced, were sold and resold by brokers within the state of California. The products of the Ice Company—the ice—was not shown to be the subject of interstate commerce. The only possible claim which can be made in this connection is that the indirect effect of the stoppage of work in the plant of the Ice Company would indirectly interfere with the shipment of vegetables and interrupt the flow of vegetables from California to other states. It was to this proposition that the offer of proof above mentioned was addressed. This offer was refused [R. 513]; and no other proof was produced which in any wise tended to show that there would, in fact, be such an interruption or interference with the flow of vegetables from California to other states.

It seems clear that such proof of facts showing the probable result of the stoppage of work in the plant of the respondent Ice Company is an essential prerequisite to the assumption of jurisdiction over the Ice Company by the Labor Board:

Edison Co. v. Labor Board (1938), 305 U. S. 197, 220-221;

N. L. R. B. v. Baltimore Transit Co. (C. C. A. 4, 1944), 140 Fed. (2d) 51. (Cert. den. 64 S. Ct. 487);

Southern Colorado Power Co. v. N. L. R. B. (C. C. A. 10, 1940), 111 Fed. (2d) 539;

N. L. R. B. v. Cleveland-Cliffs Iron Co. (C. C. A. 6, 1943), 133 Fed. (2d) 295.

In *Edison Co. v. Labor Board*, *supra*, the Supreme Court placed great stress upon the “undisputed and impressive evidence of the dependence of interstate and foreign commerce upon the continuity of the service of the petitioning companies” (p. 220). The Court was at some pains to point to the evidence which showed the certainty of a “catastrophe” should there be a cessation of the service of the Company to the numerous concerns whose business, in turn, is directly related to commerce between the states. “It cannot be doubted,” said the Court, “that these activities, while conducted within the State, are matters of federal concern. In their totality they rise to such a degree of importance that the fact that they involve but a small part of the entire service rendered by the utilities in their extensive business is immaterial in the consideration of the existence of the federal protective power.” Thus upon evidence before the Court the effect of the business activities of the petitioning companies could be determined. In the absence of such evidence no conclusion as to such an effect could be reached.

In *N. L. R. B. v. Baltimore Transit Co.*, *supra*, evidence was produced to show that during the morning rush hours 100,000 passengers were carried by the street railway of the company to outlying industrial areas and 90,000 passengers were carried to the wholesale and manufacturing district in the heart of the city. From the evidence it was made to appear that 45,000 employees of 47 large industrial concerns were dependent upon the company for transportation to and from work. Other evidence showed the interrelation of the transportation system to interstate activities,—an interrelation which was direct and not remote.

The transportation system furnished by the company was the only transportation available to move so vast an army of workers to and from their work, and their work was directly connected with interstate commerce.

In *Southern Colorado Power Co. v. N. L. R. B.*, *supra*, it was shown by evidence that many of the concerns with which the company had dealings to which power was supplied had stand-by plants which could be used to carry on the interstate business of these concerns. But all did not have such provision for emergencies. Said the Court:

“ . . . Some of the concerns furnished electric energy by petitioner had emergency equipment which could be used in the event that the supply of power from petitioner was interrupted. *Others had no such emergency equipment.*” (Emphasis added.)

The Court adhered to the rule that:

“ . . . Where federal control is sought to be exercised over activities which, separately considered, are intrastate in nature, it must appear that there is a *close and substantial relation* to interstate commerce in order to justify federal intervention for its protection. *Unless these facts exist*, the Board has no jurisdiction in a controversy between employer and employees. . . .

“The question whether operations do or do not affect interstate commerce in such a close and intimate fashion as to confer jurisdiction upon the Board *must be determined by the facts as they exist in each case.* . . .” (Emphasis added.)

In *N. L. R. B. v. Cleveland Cliffs Iron Co.*, *supra*, the Court was impressed with the distinctions made in the “painstaking and exhaustive analysis of the cases” made

by respondent. Conceding that the distinctions thus made were apparent it was held that the activities of the company were shown by the evidence to be such that a close and intimate effect upon interstate commerce could be observed. The evidence showed that a subsidiary company was directly engaged in interstate commerce and that the products of the company sold to this subsidiary and others were transported in interstate commerce. The fact that the raw materials supplied by the company to independent agencies were by the latter first processed and converted into other products did not effectively insulate the business of the company from its effect on interstate activity. All of the conclusions thus reached by the Court was based on detailed evidence of the actual state of facts involved.

From the foregoing, it is to be seen that there is no presumption of jurisdiction in the Board. Facts must be before the Board and before the Court upon which the effect of the activity of the employer may be evaluated. The close and intimate, the substantial effect on interstate commerce must be shown by evidence. Where no evidence in this regard is produced, and where even the evidence offered on the issue is rejected there is no basis for a conclusion that the business activities of an employer has even a slight effect on the interstate activities of the customers of the employer.

Distinguishable from the facts in the case at bar are cases where the customers of the employer must needs rearrange their equipment in order to avoid an interruption in their shipments. Thus in *Pueblo Gas & Fuel Co. v. N. L. R. B.* (C. C. A. 10, 1941), 118 Fed. (2d) 304, it was shown that the customers of the employer could by

rearrangement of their plants use coal burners instead of gas. This difficult and costly process was held to be, in itself, evidence of the necessary effect of a stoppage of work by the employees of the company.

In the case at bar, however, the offer of proof included evidence that there would be no interruption in the supply of ice to the shippers. Even without this offer, there is no evidence that the shut down of the Ice Company plant would interfere with the shipment of vegetables to any degree. The inference drawn by the Board that the business of the Ice Company affects interstate commerce is not based on any evidence, substantial or otherwise.

Distinction must also be made between those cases, which like the *Edison Co.* case require proof of a substantial connection with interstate commerce and those cases which hold that no substantial effect is necessary to be shown. The difference lies in the circumstance that in the one case the business of the employer had only an indirect effect on interstate commerce, while in the latter case the products of the company went directly into the channels of commerce and were themselves transported.

In the latter class of cases fall the following:

Labor Board v. Fainblatt (1938), 306 U. S. 601;

Labor Board v. Bradford Dyeing Ass'n (1939),
310 U. S. 318;

N. L. R. B. v. Henry Levaux, Inc. (C. C. A. 1,
1940), 115 Fed. (2d) 105;

Cudahy Packing Co. v. N. L. R. B. (C. C. A. 10,
1941), 118 Fed. (2d) 295.

In each of the above cases the employer either had the actual goods in its hands and actually controlled the ship-

ments to and from its plant or produced or processed goods belonging to it which afterwards found their way into the channels of interstate commerce. Language therein contained to the effect that there need be no showing of any substantial effect on interstate activities of others is manifestly not to be applied where the goods are neither under the control of the employer nor do the finished products of the employer find their way across state lines.

Here, in the case at bar, there was no proof that any of the ice of respondent Ice Company at any time left the State of California. The nature of the product tends to negative any inference that the ice may have been so transported. Neither does the respondent Ice Company directly control the flow in interstate commerce of any product of others.

There remains one final case to be discussed. In *Butler Bros. v. N. L. R. B.* (C. C. A. 7, 1943), 134 Fed. (2d) 981, the employer maintained a building tenanted by firms engaged in interstate commerce. The cessation or interruption of janitor service in this building was held to affect interstate commerce and to give to the Board the jurisdiction provided in the Act. There, again, it was manifestly impossible to service the building by other means should a labor dispute arise. Unlike the facts in the case at bar, the facts in the cited case disclose that there would necessarily occur an interference with the interstate business of the tenants were the building occupied by them closed. In the case at bar, we have seen, there was rejected an offer to prove that the interstate activities of the vegetable shippers would go on without interruption were the Ice Company shut down.

Unless we are to say that every employer in his business activity affects the flow of interstate commerce, there must come at last before the courts a case where the employer is not subject to the Act, and beyond the jurisdiction of the National Labor Relations Board. The facts upon which a determination that the business of an employer affects the interstate activities of others is made should be before the Board and before the court. In this case the determination of the Board that the jurisdictional element is present is wholly lacking in evidenciary support.

POINT II.

A. Organization and Functioning of Inside Union, Holtville Ice & Cold Storage Employees Association.

For the purpose of this proceeding the Trial Examiner has given the background of the respondent Associated Farmers and the purposes for which it was organized. [R. 51-52.]

The evidence in this proceeding establishes that respondent Osborne was and is a farmer, member of Board of Supervisors and Secretary-Manager of Associated Farmers of Imperial County. [R. 199.]

On the night of 26th of September, 1941, and prior to commencement of operations by the Ice Company and while Willard was still absent from Holtville ten of employees signed application blanks to become members in the A. F. of L. and on the following day, 27th, having learned that they could not have their own officers [R. 693] began looking around for another method to give them a union of which they were in control. [R. 693.] Herring had

talked with a Cramer Baking Co. driver-salesman by name of "Leo" on the 27th of September, and had asked him about the employees association at the Cramer plant [R. 691] and whom they could get to help them and "Leo" referred him to Osborne [R. 692], and the following day Herring called Osborne at the office of Associated Farmers and asked him to come over [R. 693] and the next day or two Osborne went to Holtville to see Herring [R. 693] and Herring told Osborne that the men wanted an Independent Union and wanted Osborne to help them [R. 694], and gave him the names of some of the employees and in so doing necessarily gave him the names of those who had signed application blanks at the hall of the A. F. of L. on the night of the 26th of September, 1941, as Harlan was the only employee at that time who had not signed. [R. 694.] Osborne told Herring to contact the boys and see how many were interested, which Herring did in the following several days. [R. 695.] Within a week, eight of the thirteen employees met at Harlan's house and Herring called Osborne to be present [R. 697] and Osborne met and on the questions asked by the men told them of one independent union which was going along all right (Cramer's) and left, telling them to find out what the employees wanted to do and if they needed him to call him. [R. 697.] Osborne met with them at their request on October 15th and advised them only as to procedural matters. Osborne on request advised them that Whitelaw was an attorney familiar with labor matters. Following advice by Whitelaw at his office and after several more meetings the association came into legal being on October 30, 1941, with all the then employees excepting supervisory and clerical.

The contact by Willard with Osborne was on Willard's phone call and was subsequent to the time or times hereinabove set out because Osborne knew of the union activity already [R. 197-198] and had talked to Herring and Harlan as early as September 27th or 28th, and at that talk with Willard did not discuss any of the matters disclosed by the employees, Herring, Harlan, etc. [R. 199, 828-829, 220.] Willard asked Osborne to make an investigation but Osborne never gave Willard any report what he found except to tell Willard "That the men were still loyal to him and wanted to work for him." [R. 228-229.]

In the initial talk with Willard, when advised by Osborne that he (Willard) could do nothing except to keep hands off he was perturbed over that advice [R. 220] and sought legal advice from Attorney Whitelaw. [R. 563.]

In Osborne's talks with Herring, Harlan, and Stout, mention was made of *one* employee's association, "Cramer's", and none other, and both Herring [R. 691] and Stout [R. 756] knew of this association through other sources, and the Board found [R. 53] that the employees first became interested in union organization as early as April or May of 1941, but that interest was in an *employee's association*. [R. 687.]

There is absolutely no evidence that Osborne or Associated Farmers formed or had anything to do with forming or setting up a number of any unaffiliated organizations. [R. 53.] This finding is entirely without support. The only evidence in this respect is that the Associated Farmers were in favor of employee's associations.

In all the testimony there is nothing from which the Board can base its finding that Osborne suggested the

formation of “unaffiliated” union [R. 57, 58], but quite to the contrary the entire evidence of Osborne [R. 225, 226], Herring [R. 690-693], Stout [R. 740-744], Harlan [R. 292] shows that all the suggestions came from one or more of the employees and that the birth of idea was in their minds, bringing Osborne into the picture only from suggestion of an outsider “Leo.”

We must concede that Osborne testified that after talking with Willard he contacted some of the employees, but even then in his testimony [R. 225-227], the suggestion came from Harlan, and in his subsequent conversations

“They had gone into the matter of local association, and decided that is what they wanted to do. They wanted my advice. I advised them they could do whatever they wanted to do. They wanted to organize and I explained procedure.” [R. 230.]

We further concede that it is well settled rule of law that the Findings of the Board as supported by substantial evidence are binding upon the Court but we are satisfied that it is the further rule of law substantiated by the cases that the Courts have not construed this language as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence.

We respectfully submit that the Board in arriving at its Findings upon which its Conclusions of Law are based were arrived at by taking only a part of the evidence and totally disregarding the other convincing evidence as it has in the above finding just quoted and particularly in its Finding at the top of page 61 of the Record, and its Finding contained on page 62 of the Record.

We respectfully refer to a decision of this Ninth Circuit decided on December 3, 1938, and being the case of *N. L. R. B. v. Union Pacific Stages, Inc.*, on which a rehearing was denied on January 9, 1939 and we feel that this particular case is of such value to the determination of our case at bar that we wish to quote at length from the above case, which case is cited in 99 Federal (2d) 153, 177:

“It is suggested that this court should accept the findings of the Board; that contradictions, inconsistencies, and erroneous inferences are immune from criticism or attack by Section 10(e) of the Act, 49 Stat. 453, 29 U. S. C. A. §160(e), which provides that ‘the findings of the Board as to the facts, if supported by evidence, shall be conclusive.’ But the courts have not construed this language as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence.

“‘We are bound by the Board’s findings of fact as to matters within its jurisdiction, where the findings are supported by substantial evidence; but we are not bound by findings which are not so supported, 29 U. S. C. A. §160(e) (f); *Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 57 S. Ct. 648, 650, 81 L. Ed. 965. Substantial evidence is evidence furnishing a substantial basis of fact from which the fact in issue can reasonably be inferred; and the test is not satisfied by evidence which merely creates a suspicion or which amounts to no more than a scintilla or which gives equal support to inconsistent inferences. Cf. *Pennsylvania R. Co. v. Chamberlain*, 288 U. S. 333, 339-343, 53 S. Ct. 391, 393, 394, 77 L. Ed. 819.’

Appalachian Electric Power Co. v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989.

“ ‘Substantial evidence’ means more than a mere scintilla. It is of substantial and relevant consequence and excludes vague, uncertain, or irrelevant matter. It implies a quality of proof which induces conviction and makes an impression on reason. It means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and, considering them in their entirety and relation to each other, arrives at a fixed conviction.

“The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power. Testimony is the raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be wrought. National Labor Relations Board v. Thompson Products, Inc., 6 Cir., 97 F. 2d 13, 15.

“See, also, Ballston-Stillwater Knitting Company, Inc. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, decided August 1, 1938.”

It appears that the authorities are in accord with the theory in the above cited case that the findings of the Board are not conclusive upon the Circuit Court of Appeals unless supported by a relevant and material evidence, *National Labor Relations Bd. v. A. S. Abell Co.* (1938, C. C. A. 4th), 97 F. (2d) 951; *National Labor Relations Bd. v. Bell Oil & Gas Co.* (1938; C. C. A. 5th), 98 F. (2d) 406 (rehearing denied in (1938, C. C. A. 5th)

98 F. (2d) 870), and to the further conclusion that hearsay and non-expert opinion evidence cannot be used in the Circuit Court of Appeals as the basis to support the findings upon which an order, which is sought to be enforced rests. *Consolidated Edison Co. v. National Labor Relations Bd.* (1938), 305 U. S. 197, 83 L. ed. 126, 59 S. Ct. 206; *National Labor Relations Bd. v. Columbia Enameling & Stamping Co.* (1939), 306 U. S. 292, 83 L. Ed. 660, 59 S. Ct. 501.

It is our contention and we most seriously make the same that the Board in making its findings in order to support its order herein made with respect to these respondents has taken not only irrelevant and immaterial testimony, but the rankest hearsay testimony entirely unsupported. One glaring example is the testimony of Henry G. Miller [R. 360-363] in which it has made the finding that the inference is warranted, in view of Metz's statements to Miller that he talked with Metz at the behest of Osborne [R. 59], and the further finding that the Associated Farmers and the Ice Company are responsible for the acts of Metz. [R. 62.]

The Board has further violated the Rule of Law laid down in the above cited cases in that it has totally failed to take into consideration the testimony as a whole but has in its desire to sustain the attack by the labor unions upon the Associated Farmers and Osborne, completely ignored relevant and competent testimony adduced by its attorney from witnesses such as Herring, Stout, Harlan, and Willard, but has reached into the realm of "inferences" in order to attempt to sustain its position taken.

B. Freedom of Ice Company Employees From Interference, Restraint, or Coercion in the Exercise of the Right of Self-Organization.

The Board takes a most peculiar position in that it finds that the complaining witness, the A. F. of L. Union, did not have a majority among the employees at the time or subsequent to the time of the inquiries herein, yet it takes the position that the expression of the employees was not a free expression of themselves, but dominated by the Company under the activities of Osborne, the Secretary-Manager of the Associated Farmers.

To sustain that position they have gone far afield to assume and find that Osborne dominated the employees and coerced them into forming an employee's association. The only basis for such a finding is that they ignore all competent and relevant testimony and fail to take into consideration all the testimony adduced before them and solely from the conversation of Osborne with Willard in which Willard asked Osborne to "interest himself" in the Union activities, which was met by a reply from Osborne that he would make an "investigation." There is nothing in the record which would support any finding that Osborne would do anything more than make such an "investigation," which he admits having made and upon severe cross-examination by the Board's attorney, stated that he made no formal report to Mr. Willard concerning such "investigation," but that the employees were loyal to Mr. Willard and wanted to work for him. There is nothing in this statement, which can possibly be construed by the Board or by this Court, that Osborne did anything else than make an "investigation."

The evidence is absolutely conclusive and uncontradicted that the men themselves as early as February, 1941, talked of an employee's association and as the record discloses the plant is closed during the summer months and it was not until the complaining Union attempted to organize the prospective employees of the Ice Company, did the question of an employees association again arise, at which time, shown by the evidence hereinabove quoted and referred to, the idea of an employee's association was the mind child of a group of men, Harlan, Herring, and Stout, and was not suggested or fostered by Osborne; that the association didn't come into legal being until October 30, 1941, was from the fact that the plant did not start until that time and the men didn't know who would be the actual employees as some of them were bound to be let out by reason of the change over from the diesel to the electric plant. [R. 737-738.]

No doubt Mr. Smith in his brief has fully covered these facts and they are, therefore, not repeated here.

The testimony of Herring [R. 690-693] and of Stout [R. 737-742] is uncontradicted evidence to the effect that neither Osborne nor Willard had anything whatsoever to do with the employees favoring an employee's association over that of the Union, and we respectfully urge the Court to bear in mind that these two men had signed application to become Union members. The evidence of these two men is of such a character that the Court cannot overlook it and emphasizes the fact that the em-

ployee's association was the vehicle by which the men wished to operated as bargaining agent.

There is no testimony that any employee joined the association because he felt that his employer Ice Company expected or wanted him to or because he feared he might incur the displeasure of the Ice Company, if he failed so to do.

There is nothing in the testimony of any witness that any adverse effect would follow membership in the A. F. of L. Union and certainly the negotiations had by the members of the Union with Willard, which discloses that the entire membership at one time or another was in such negotiations, coupled with the advantages gained by the association, is certainly contrary to any finding that this association was not the free choice of the employees.

The case of *National Labor Relations Board v. Automotive Maintenance Machinery Co.*, 116 Fed. (2d) 350 (C. C. A. 7th, 1940) clearly establishes the impropriety of the Board's conclusions and order in the instant case.

We believe and respectfully submit that the evidence clearly establishes the fact that it was and is the desire of the employees to have an employee's association and that the Board cannot order its disestablishment in face of this expression. The case above is ample authority for this proposition and bearing in mind that the A. F. of L. Union was not the legal representative of the employees, then this Board, by its order, seeks to determine for the employees that they have no right of choice, which in the very essence of things, is in violation of the National Labor Relations Act and contrary to the cited case *supra*.

C. Freedom of Employees From Domination or Interference With the Formation of Their Labor Organization.

The Board has based its Conclusions of Law and Order upon the finding that Willard being a contributor to the Associated Farmers and in asking Osborne to "interest" himself in Willard's affairs that the acts of Osborne were the acts of Willard in that Osborne and the Associated Farmers became the employer within the meaning of Section 2(2) of the Act.

There is evidence that the Associated Farmers' policy was in favor of employee's association as against a closed shop union A. F. of L. or C.I.O. contract, but there is no evidence in the record that the Associated Farmers either through Osborne or any of its officers, or other agents had actually formed an employee's association. There is nothing in the evidence that Willard knew or had reason to know of the policy as expressed by Osborne of the Associated Farmers being in favor of the employee's associations. If Osborne or the Associated Farmers became the agent of Willard under the Civil Code of the State of California §2295:

"An agent is one who represents another called the principal in dealings with third persons such representation is called agency."

§2298:

"An agency is either actual or ostensible."

§2299:

"An agency is actual when an agent is really employed by the principal."

§2300:

“An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent, who is not really employed by him.”

Osborne was neither representing Willard nor holding himself out to represent Willard. An agent's authority, if actual, must be communicated to that agent by the principal. We must ask ourselves, therefore, what were the duties of Osborne, what did Willard mean when he asked Osborne to “interest himself”? The subject matter between Willard and Osborne was the activity by the A. F. of L. Union among the men who might become employees of Willard the next ensuing season and its own contention and we believe we are correct from the evidence in stating that Osborne was to do nothing other than to inquire and determine how far the Union had succeeded in securing members among the men who might become the employees of Willard when he opened up his plant in November. We feel that any other inference which is drawn from this testimony is not founded upon substantial evidence.

There is evidence from Osborne's testimony that he inquired of certain of the employees as to the activity of the A. F. of L. Union but the *substantial* evidence is that the men who were instrumental in forming the employee's association brought to Osborne's attention the solution of their troubles by the means of the inside union. Conceding for the moment the finding of the Board that Osborne suggested the formation of the inside union, yet there is nothing claimed by the Board nor any evidence introduced that Osborne made any threats other

than the testimony of Davis to the effect that Osborne stated that Willard would close his plant down rather than have the A. F. of L. Union take charge of it, which from the evidence itself, shows that this statement was merely an opinion of Osborne and nothing coming from Willard, nor nothing to which he had been authorized to state to any of the employees in his representative capacity, if such existed. The most which could be said from the acts and expressions of Osborne conceding the findings of the Board to be correct would be that he indirectly conveyed to the employees the feeling and opinion of Willard that the A. F. of L. Union was not necessary and that Willard did prefer that the Union did not come into his plant. Such expressions even made by a principal and not by one who has been declared by the questionable relevant and competent testimony to be an employer within the meaning of this Act would not be a violation of the National Labor Relations Act.

Such proceedings do not constitute coercion or intimidation but fall squarely within the privileges guaranteed by the Fifth Amendment to the Constitution. These privileges have been construed recently and decided by our Supreme Court in the following cases:

National Labor Relations Board v. Virginia Electric & Power Company, 314 U. S. 469 (1941);

National Labor Relations Board v. American Tube Bending Co. (1943), 134 Fed. (2d) 993; 146 A. L. R. 1017; note page 1024;

Press Co. v. National Labor Relations Board, 118 Fed. (2d) 937;

National Labor Relations Board v. Citizen-News Co. (C. C. A. 9, 1943); 134 Fed. (2d) 962.

If in the purview of these cases that expressions and acts attributable to Osborne were not coercion, even though he may have represented Willard, then certainly they are not domination nor interference and the Board's finding and order should not be sustained.

D. Neither Osborne nor Associated Farmers Was Employer Within the Meaning of Section 2(2) of the Act.

The evidence in connection with the findings of the Board have certainly been fully set out, both by the Board and by these respondents, so that the facts are fairly presented to this Honorable Court.

We can get very little help from the authorities to assist us in determining when a person becomes an employer within the meaning of the Act, when no actual relationship of employer and employee exists. Osborne and the Associated Farmers had no supervisory control over the employees of the Ice Company. They had no right to hire and fire. The Board in its brief on page 15 has cited certain cases in support of its contention that these respondents acting at the request and in the interest of the Ice Company directly participated in the formation and establishment of the inside union as bargaining agent of the Ice Company's employees. In each of those cases, particularly in the *Shipper Vegetables Association*, cited 122 Fed. (2d) 368, the association did the actual hiring and firing for the association. In the case of *Long Lake Lumber Co.*, the decision of this Circuit cited in 138 Fed. (2d) 363, the respondent Robinson was a local contractor doing the actual hiring and firing and supervising the employees. In the *Taylor-Colquitt Co.*, C. C. A. 4, 140 Fed. (2d) 92, the individual respondent was the wife

of the foreman and she had interfered with the election held by the Board using threats and violence all with the knowledge and acquiescence and approval of the Company. None of these cases were where an independent agency such as the Associated Farmers, a legal entity, restricting its activity to advice and assistance, unaccompanied by any threats or force has been held to be the agent of the employer and the employer chargeable with such acts.

It is a fact that the Ice Company together with hundreds of other individuals and companies have contributed for many years to the support of the Associated Farmers, and it appeals to us very strongly that the mere contribution to the general activities of such an association, over which they have no control, except by refusal to contribute are not of sufficient importance nor of legal weight to connect such contributor with the Associated Farmers as has been done by the Board's findings and order in this instant case.

It is quite apparent that the Board is seeking to stifle the operations and existence of the Associated Farmers for the simple reason that the Associated Farmers have been opposed as shown by their declaration of principals and by testimony of Osborne to be against a closed shop. It is a matter of public record that the Board is openly hostile to inside unions.¹

¹"In regard to independent unions, the National Labor Relations Board has consistently pursued a policy aimed at the extermination of these nationally unaffiliated organizations. . . .

"That the Board strains every sinew to find company domination of independent organizations is demonstrated by the *International Shoe Co. case*. . . ." *Final Report of the Special Committee of the House of Representatives, 76th Congress, 1st Session, appointed Pursuant to H. Res. 258 to Investigate the National Labor Relations Board*, December 28, 1940, in Vol. 4 Bureau of National Affairs, Verbatim Record of the Proceedings, p. 445, at pp. 473, 474.

The provisions of the Act Section 2(2) define "employer" to include "any person acting in the interest of an employer, directly or indirectly." These broad provisions cannot be interpreted in their exact literal significance. If a newspaper editor, a columnist, a radio commentator, a political speaker act in the interest of an employer during a labor dispute the broad language of this subsection would place all of them in the category of an "employer." They would each be subject to a cease and desist order,—not as mere agents of an employer but as principals. The very statement of this proposition shows the absurdity thereof.

Neither have the courts thought that the act was so broad. In *N. L. R. B. v. Moenich Tanning Co.* (C. C. A. 2, 1941), 121 Fed. (2d) 951, 953-4, Judge Learned Hand commented on the finding of the Labor Board that such outsiders were subject to the Act, saying:

" . . . We cannot, however, see how the declarations of the city attorney and of a 'local banker', or the articles in the village newspaper (later repudiated by the company, as it happened) can be brought into the same class as the declarations of 'supervisory employees'."

Certainly if the acts and declarations of such outsiders could not be attributed to the principal employer, the outsiders could not themselves be classed as employers.

The facts cited by the Board go only to show that Associated Farmers and Osborne became interested in the union activities in Imperial Valley, because of the general nature of the purposes of the organization. It was not shown that the Associated Farmers by any corporate act authorized the particular activities of the respondent

Osborne. It was not shown that Associated Farmers or Osborne acted as the representative of the Ice Company. On the contrary, the implication is strong that the activity of these respondents was in line with the settled policy of this organization and of the preconceived views of Osborne.

It must be recognized that prior to recent decisions of the Supreme Court the question as to whether the employer is himself subject to a cease and desist order because of the acts and declarations of supposed supervisory employees was to be determined on the basis of the principles of the law of agency. This is no longer true. There is now substituted the subjective test as to whether or not the employees believed that the acts and declarations of the supervisory employees were authorized by the employer. The question in this regard now is: Did the employees believe that the supervisor was acting at the direction of the employer?

This Court applied that test in *N. L. R. B. v. Montgomery Ward & Co.* (C. C. A. 9, 1943), 133 Fed. (2d) 676, and therein reviewed the Supreme Court decisions on the point. But in holding that Montgomery Ward & Co. were chargeable with the acts and declarations of a supervisory employee, though done against the specific direction of the employer, this Court did not say (and we think did not mean to say) that this supervisor was himself an employer.

There is some merit to a fiction which makes a supervisor, or other person connected by business relationship to the principal employer, himself an employer. But the creation of the relationship of employer and employee between such an organization such as the Associated

Farmers and the employees of the Ice Company is beyond the normal conception of the function of a legal fiction. Definition in legislation must have some basis in fact. Within bounds such definition eliminates the necessity of proof where proof is difficult, but may be made.

The subjective test above referred to is stated by the Supreme Court in *I. A. of M. v. Labor Board* (1940), 311 U. S. 72, 82, in this language:

“ . . . Thus, where the employees would have just cause to believe that solicitors professedly for a labor organization were acting for and on behalf of the management, the Board would be justified in concluding that they did not have the complete and unhampered freedom of choice which the Act contemplates. Here there was ample evidence to support that inference. As we have said, Fouts, Shock, Dinninger and Bolander all had men working under them. To be sure, they were not high in the factory hierarchy and apparently did not have the power to hire or fire. But they did exercise general authority over the employees and were in a strategic position to translate to their subordinates the policies and desires of the management. . . .”

No evidence herein appears which tends to show that the employees were led to believe, *or that they did in fact believe*, the Associated Farmers or Osborne to be speaking for the management. The anti-union sympathies of Associated Farmers and Osborne appear to have been known to all. These respondents needed no excuse to speak to the employees of any company, including the Ice Company, of their hostility to the coming in of an outside union to the Imperial Valley. But this activity, though it may have been carried on in behalf of the Ice

Company neither makes the Ice Company chargeable with the conduct of the outsiders, nor does it make of the Associated Farmers and Osborne employers. They were neither of them employers of the Ice Company workers and no fiction of law should translate them into such a category.

Unless the Labor Board is to undertake to evaluate the influence of every organization and of every individual who speaks his mind while a labor dispute is in progress, the extension of the term "employer" to mere outsiders should be discountenanced. The language of Judge Learned Hand, above quoted, is opposite to the case at bar.

POINT III.

A. The Declarations Made by Associated Farmers and Osborne Must Be Protected Under the Fifth Amendment of the Constitution.

Free speech is a prized liberty of Americans. In a world where governments tend toward denying their citizens the right to self expression this liberty becomes more dear. This liberty may be limited to the extent that this freedom may not be used to injure others. But it must be with trepidation that we limit the right to freely say what we believe.

The right of employers under the Act must, it is true, be circumscribed so that under the guise of free speech the employer be not permitted to coerce his employees. Employers, themselves, have nevertheless been permitted to state their views without incurring a penalty therefor. And though the views thereby stated were unfriendly to

labor this statement of view unaccompanied by threat of an untoward to those employees in disagreement, the employer has been upheld in his right to self expression.

N. L. R. B. v. Virginia Power Co. (1941), 314 U. S. 469;

N. L. R. B. v. American Tube Bending Co. (C. C. A. 2, 1943) 134 Fed. (2d) 993 (cert. den.);

N. L. R. B. v. Citizen-News Co. (C. C. A. 9, 1943), 134 Fed. (2d) 962;

Press Co. v. N. L. R. B. (1941), 118 Fed. (2d) 937, 942; 73 App. D. C. 103 (cert. den.);

Continental Box Co. v. N. L. R. B. (C. C. A. 5, 1940), 113 Fed. (2d) 93;

Jacksonville Paper Co. v. N. L. R. B. (C. C. A. 5, 1943), 137 Fed. (2d) 148 (cert. den.);

N. L. R. B. v. Superior Tanning Co. (C. C. A. 7, 1940), 117 Fed. (2d) 881 (cert. den.).

It must be remembered that in the language of the foregoing decisions the courts were dealing with the right of the employer himself to express his opinion of labor unions generally and of a particular union involved in a pending labor controversy. Here, on the other hand, we are dealing with the right of an independent organization. Conceding to be true the inference made by the Board that this independent organization was formed for the express purpose of persuading employees from joining a union, still that right still exists. It is still the right of any person or group of persons to entertain and express an opinion that labor organizations are detrimental to our national life. It is still the right of individuals and of organizations, political or otherwise, to urge em-

ployees to form their own union and to deal, not with the A. F. of L. or an affiliate, or with the C.I.O. or its affiliates, but to deal with a local organization of employees. Company unions are not outlawed under the Act. Company dominated unions are so outlawed. But the right to speak is not taken away from those who are not connected with management.

There is no limitation upon the right of outsiders to speak. Things which if said by the employer would violate the law are permitted to those who are not employers. It must be remembered that the provisions of the Act, in so far as they limit the right of the employer to influence his employees, are statutory only. The acts forbidden by this statute are *malum prohibitum* only and not *malum in se*. Things said, which would be prohibited to an employer, are yet lawful when said by one not connected with the business. The law does not yet condemn a Westbrook Pegler. The Associated Farmers and Osborne in the case at bar did not exceed the right guaranteed to them under the Fifth Amendment.

POINT IV.

The Order of the Board Is Invalid.

The Order of the Board directs these respondents to not only cease and desist:

(1) From dominating or interfering with the formation of the employee's association in this instant case, but seeks to tie the hands of these respondents for all future time with respect to its activities in advising with employees and the formation of a union of employees; or contributing support or assistance to any organization of any employer;

(2) Soliciting or collecting funds from any source to be used in whole or in part for purpose of interfering with the rights of employees guaranteed by Section 7 of the Act; which in final analysis would bar the Associated Farmers from the collection of funds for any purpose by placing it subject to contempt of this Court, if at any time it should form or assist in the formation of an employee's association.

By the Order :

Osborne, as an individual, can no longer be a free American citizen.

To say that the Board has taken a broad view of its powers is, we feel putting it mildly.

It has gone beyond any authority which can possibly be construed from the Act.

Had it confined itself to ordering the respondents or either of them from interfering with or dominating the formation of employee's association in the Ice Company, its authority to make such an order (based upon substantial evidence) could not be so seriously questioned. When the Board reaches out and by its order attempts to direct and restrict an association, or an individual in its or his future actions, then, we submit, it is time this Court raises the block signal against such procedure.

We submit that the Order is void in its entirety with respect to these respondents.

In that :

It is violative of the privilege guaranteed by the Fifth Amendment to the Constitution. We respectfully refer this Court to the cases cited under Point III *supra*.

It is based upon findings of fact, unsupported by substantial evidence. *N. L. R. B. v. Union Pacific Stages, supra.*

Conclusion.

It is respectfully submitted that there is no substantial evidence in support of the Board's findings and that the Order of the Board should be denied enforcement in its entirety.

Should the Court find that Osborne and the Associated Farmers were employers within the meaning of the Act, and that Osborne and the Associated Farmers interfered with the formation of the employee's association and dominated the employee's association within the meaning of Sections 8(1) and 8(2), then it is respectfully submitted that this Court should confine its decision and order to the actions of Osborne and the Associated Farmers to the instant case, and the employee's association of the Ice Company, and set aside all other portions of such order, which restricts the freedom of action and speech by the Associated Farmers and Hugh T. Osborne.

Respectfully submitted,

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Dated: July 1, 1944.

